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Volume 10, 1954 Trial Transcript: Defense Witnesses

Cuyahoga County Court of Common Pleas

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness BETTY SHEPPARD, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you tell your name to the jury?

A Betty Sheppard.

Q And you are the wife of Dr. Stephen Sheppard?

A Yes, I am.

Q Who just preceded you?

A Yes.

Q Where do you live, Mrs. Sheppard?

A 19027 Inglewood Drive, Rocky River.

Q And you have lived there at that address how long?

A Five years.

Q Do you have a family?

A Yes, I do.

Q What does your family consist of, outside of your husband?

A I have one daughter, nine, and another daughter six.

Q And did you have another child?

A Yes, I did.

Q And did that child die?

A Pamela died in April. She was 11 months old.

Q Now, does Chip, Dr. Sheppard's son, live with you?

A Yes, he does.

Q You are taking care of him?

A Yes.

Q Were you on friendly terms with Marilyn, your sister-in-law?

A Yes, I was.

Q And how close were you with her?

A I think we were very close.

Q Visited back and forth?

A Yes, we did.

Q Do you recall seeing her during the week prior to the day she was murdered?

A Yes.

Q Where did you see her during that week?

A Well, I saw her almost two weeks prior at her home.

Q And what was the occasion that you went to her home two weeks prior to the day of her murder?

A We were out sailing in the evening with another couple, and we went to Sam and Marilyn's house to visit with them, and we beached the boat and went up to the house and talked to Sam and Marilyn for a while that evening.

3 Q And was there anything that you noticed that was out of the ordinary in the relations between your brother-in-law and sister-in-law?

A No. Everything was fine, and we had a very enjoyable evening.

Q Did you have occasion to notice at the time that you knew them Sam's treatment of his wife?

A It was just like always, very respectful, and they were very happy about just being together and having dinner.

Q And as far as you could observe, they lived pleasantly together?

A Yes.

Q When was the next time after that that you saw them?

A My husband and I went to their home on Wednesday, and that was the time when I was taking Marilyn some maternity clothes.

Q That was Wednesday prior to July 4th?

A That's right.

Q Was that as a result of the conversation you had with Marilyn?

A Yes.

Q And when did that conversation take place that you had that gave rise to your delivery of some maternity clothes?

A That was the Friday that we were visiting them after the sail. Marilyn and I were in the kitchen talking.

Q And did you learn at that time that Marilyn was pregnant?

A Yes, I did. Marilyn asked me if I had noticed, and I said no, and she was very happy to tell me about it.

Q Now, then, on that Wednesday, then, you delivered the maternity clothes to her?

A Yes.

Q Those were the clothes you had when you had Pamela, is that right?

A That's correct.

Q Now, then, was Sam home at that time?

A No, he wasn't. He was out of town.

Q Did you stay any length of time?

A No. As a matter of fact, we were just about to leave when Marilyn and Chip drove in the driveway after us, and they had seen us turn into the driveway, so they came in, and then Marilyn was taking Chip to go look at some airplanes, model airplanes that were being flown in a field nearby, so we visited very shortly, and then we all left again.

Q Had you been over there on various occasions and watched the activity of Sam around the house?

A Yes. We visited there.

Q What did you notice about his activities around home there?

A Sam was like all normal husbands. He went around and helped Marilyn with things. He was very generous in helping her take care of things in the house, and they did a lot of sport activities together. We would go swimming, and go down to the beach together, and Sam and Marilyn and Chip did a great deal of things as a family.

Q Do you recall Friday prior to the 4th of July?

A Yes.

Q Will you tell the jury what occurred on Friday, as far as it

relates to Marilyn and Sam Sheppard?

A This is the Friday before the 4th?

Q That's right.

A On Friday before the 4th, we had a dinner party at our home, and Dr. Richard and his wife, Dorothy, and Dr. Sam and Marilyn, my husband and I were there, and we had dinner together, and it was a very joyous occasion. It was at that time that Marilyn told the rest of the family about their approaching baby, and we were all very happy and pleased about it, and Sam and Marilyn were, also. We complimented Marilyn on how well she looked and how well she felt at the time.

Q Did you have knowledge at that time that Sam and Marilyn had decided upon the name of this baby?

A Yes, we did.

Q What was the name that you learned they had decided upon?

A The name was to be the same as my husband's Stephen Allen.

Q Now, then, your husband testified they departed, they were the first to depart on Friday night.

A Yes, they were. They had to get home because their sitter had to be home by a certain time.

Q Did you see Sam again that evening after he left for his home?

A Yes, we did.

Q Tell the circumstances under which you saw him.

A After we had our dinner, another couple from Texas, who were visiting, came into our home to visit with us, and it was a lovely night, and we decided to go out on the lake, so we went down to the Yacht Club and Richard and Dorothy and Steve and I, and this other couple, went on Richard's cruiser. We went up the lake to Sam's house, and the plan was that we would meet again up there. However, the water had become very choppy, and as we tooted the horn and we waited for the lights of the beach house to go on, and Sam came down and by the time he arrived, the cruiser was quite close to the beach house, so that Sam had to take off his trousers and he had to come into the water and help push the boat away so that we would not get in too close to shore.

Q And then after he pushed the boat out where it could navigate, did he get on the boat, or did he leave and go --

A No, he did not. He just pushed us away and said that Marilyn was upstairs and he was going back, so we said goodbye.

Q Now, did you see Marilyn on Saturday?

A No, I did not.

Q Did you hear from her on Saturday?

A No, sir.

Q Now, on Sunday morning you were awakened?

A Yes.

Q By the alarm?

A No. By a telephone call.

Q You got some information about what had happened in Marilyn's house, is that correct?

A Yes. I answered the phone.

Q And did you accompany your husband?

A Yes, I did.

Q To Marilyn's house?

A Yes.

Q Now, then, when you arrived at Marilyn's house, will you tell the jury what you noted before you went into the house, if you did note anything?

A As we drove up to Marilyn's house, there was quite a few cars. I know there was the Mayor's station wagon, and the police ambulance, and two police cars, Dr. Richard's car, and those are the only ones that I definitely recall. There were several people standing outside, and the doors of the ambulance were open, and that's all that I believe I noted on the outside.

Q Did you go into the house?

A Yes, I did.

Q Who entered first, if you remember?

A I did.

Q And what door did you enter?

A The back door, the one towards Lake Road.

Q Did you notice anything out of the ordinary as you went into the house?

A Yes. As soon as we entered the hallway, I saw the upturned medical bag.

Q Do you remember whether there was any people in the house at that time?

A Yes, there were.

Q Do you remember who they were?

A Officer Drenkhan, I know was in the den using the telephone, and Sam was on the floor of the den. Later I saw Esther Houk and Dr. Richard, Chief Eaton, and I believe -- I don't know the names of who the other people were.

Q Now, as you entered that hallway, where did you go?

A I stayed in the hallway, just stepped beyond the medical bag and looked into the den, and that was --

Q What did you see?

A That was when I saw Dr. Sam lying on the floor motionless, and I nodded to my husband and sort of pointed toward the den, and so then he went in.

Q Did you see what he did in there?

A Yes, I did. I thought at the time that Dr. Sam was dead because he was so motionless, and I just nodded to Steve, and Steve went over and touched his head, and with that Sam moved his one foot, and then Steve, I guess, just saw that he was all right at the time, and then that was all

that I did. I just stayed there.

Q Where did you stay?

A I stepped back just a little bit farther into the dining room.

Q Did you see where your husband went after he came out of the den?

A He came into the dining room and went around the living room up to the upstairs.

Q That is, he went through the L?

A Yes.

Q And what did you do in the meantime?

A I went out and shut the screen door which was open on the porch.

Q Yes.

A And then I came back into the dining room and stayed there.

Q Did you talk to anybody during that time?

A No, I did not.

Q Did you see anything happen while you were standing there?

A While I was standing there, Chief Eaton came in the door from the Lake Road, and then Dr. Carver and Dr. Dozier came in.

Q Dr. Carver and Dr. Dozier?

A Yes.

Q You knew those two men?

A Yes, I did.

Q Where did they go?

A Dr. Carver went into the den to look at Sam, and Dr. Dozier stepped into the living room beyond me, and what he did then, I do not know.

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Q Did you see Richard at any time during the time that you were standing there in the living room, your brother-in-law, Dr. Richard Sheppard?

A I didn't see Dr. Richard until we were getting ready to leave.

Q Were you inside or outside at that time?

A Inside.

Q Inside?

A By the kitchen door.

Q Now, did you see your husband re-appear after he went around upstairs?

A Yes.

Q And where did he go then?

A He went back into the den to talk to Sam.

Q Did you go in there while he was talking to him?

A No, I did not. I stayed outside.

Q Did you hear the conversation?

A Yes, I could hear parts of it.

Q What part did you hear?

A I heard him ask whether or not he needed a stretcher or if he would be able to walk with help.

Q Did you hear any response from Sam?

A Sam said, "yes, I can manage with help."

Q And then did you see what happened in regard to Sam, what was done?

A Dr. Carver got on one side of Sam, my husband on the other, and they helped him to his feet.

Q And did you notice what they did then when they helped him to his feet?

A Well, they had one of Sam's arms around their shoulders, and it was then that I noticed he didn't have any clothing on his chest or his back, and so I suggested we take a coat out of the hall closet. And Steve reached in and grabbed his coat and we threw it over his shoulders.

Q Now, then, did you follow your husband and Sam and Dr. Carver out?

A I stopped when Richard and Esther brought Chip down through the kitchen, and they went out and then I followed them.

Q Did Sam and your brother go out before Dr. Richard and Chip went out?

A They followed me. Chip went out first, and then I went out, and then Sam and Dr. Carver and Steve. I followed Chip, and then Dr. Sam and Steve and Dr. Carver came.

Q Richard took the little boy out?

A No. Esther Houk took the little boy out.

Q Did you notice the little boy?

A Yes.

Q Well, how close were you to him?

A Quite close.

Q Does he know you?

A Yes, he does.

Q And were you very friendly? You were his aunt?

A Yes, I was. Still am.

Q And did you notice Chip at that time?

A He was not fully awake. He didn't say a word. And he was not dressed and more or less was being led by Mrs. Houk.

Q And from your experience with raising children, can you state to the jury just what his condition was as to being fully awake or partially awake?

A No. I would say he was partially awake, perhaps, to the extent that he could make his feet walk. I mean, they weren't carrying him. He was able to walk. But he didn't know what was going on or just where he was. He made no intent of knowing what was going on.

Q And no recognition of you?

A No, not at all.

Q And then you proceeded out behind them?

A That's right.

Q And then where did you go?

A I went out to the driveway and I got in the driver's -- under the driver's seat of the station wagon.

Q And did you notice what was done in regard to Sam?

A Well, Dr. Carver and Steve were assisting Sam into the front seat of the station wagon. They had to move his feet and sort of lift him into it because he couldn't

manage himself very well, and I was in the middle part of the seat, having gotten in from the other side of the car, and I helped pull him in a little bit from that angle.

Q And then you proceeded to the hospital?

A Yes.

Q During the trip to the hospital, did you make any observation of Sam?

A Yes, I did.

Q That would be helpful to this jury as to his condition?

A It rather frightened me because Sam was shaking so much, and he was moaning. He was --

Q He was what?

A Moaning.

Q Yes.

A And he was holding his neck. I had my arm around the back of the seat, and he was more or less resting against my shoulder, and he was supporting the back of his neck with his arms. He had them back like that (indicating).

And he kept shaking, very decided shakes. I mean, not just like when you are cold. It was very visible shaking.

Q Shaking?

A Yes. And his trousers were very wet and damp.

Q Did you make an observation as to what his state of consciousness was?

A Well, I don't know that I can answer that very well, except that he said -- just kept repeating the same phrases over and over. Is that what you mean?

Q Yes. You see him today sitting in the court room here. Did he look like that?

A No, not at all.

Q Well, will you tell the jury what differences you noticed, if you can, between Sam today and Sam on the morning of July 4th?

A Well, he is not shaking now and he was definitely in pain. He kept moaning and groaning and he kept complaining about his neck and said, "Why couldn't it -- why did it have to happen?" And, "Why couldn't it have been me?"

And there is a great bit of difference between him.

Q "Why couldn't it happen?"

A "Why couldn't it have been me," he kept saying.

Q Well, you have told all you remember about his appearance, that you can think of?

A Yes, I think I have. His face was swollen, it was bruised.

Q Did you notice the manner in which he talked or which he made these remarks?

A Well, it wasn't coherent like normal people speak. I mean, you would have to catch the phrases as he was saying them. It didn't come out spontaneously like you are talking normally.

Q Like we are talking back and forth now?

A That's right.

Q Sort of a mumbling way?

A Yes, that and hesitant.

Q Yes. Now, then, when you arrived at the hospital, will you describe to the jury how Sam got out of the automobile?

A When we arrived at the hospital the interns brought a cart to the door of the car which has a stretcher on top of it, and Dad Sheppard was there and several interns -- I don't recall just now who, but they had to more or less lift Sam on to the cart. He couldn't seem to manipulate his legs properly, he couldn't lift them. They just seemed to be weighted down, and they had to more or less pull him on to the cart and get him into position so they could wheel him away.

Q Did you go into the hospital that morning?

A Yes, I did.

Q And how long did you remain there?

A I don't believe it was very long, but I can't say.

Q Did you make any further observations of Sam at that time?

A No, I did not.

Q He was taken away then and taken under the care of the doctors?

A Yes.

Q Where did you go then?

A I stayed in the waiting room until Steve came out, and then he took me to Dorothy's home.

Q Did you return back to Marilyn's home that morning?

A Yes, I did.

Q And what time did you return back?

A It must have been about 10:30 in the morning.

Q Was there anybody with you?

A Dorothy was with me, the two of us.

Q Who is Dorothy?

A Dr. Richard's wife.

Q And did the two of you go there alone?

A We went to the house alone, yes.

Q Do you know when you arrived back on that second occasion whether Marilyn had been moved from that house?

A Yes, she had.

Q Did you have a particular purpose in going back there?

A We went back to get clothing for Chip, and also to get the provisions out of the refrigerator that Marilyn had purchased for the picnic that day.

Q Did you know about the fact that there was going to be a picnic?

A Yes. I was invited.

Q And when were you invited?

A For Sunday afternoon.

Q But I say, when was the invitation?

A When?

Q Yes.

A Oh, it must have been about a week, week and a half before the 4th. I don't know exactly.

Q And that invitation was extended by Marilyn herself?

A Yes.

Q Now, then, when you arrived back at about 10:30 in the morning, will you describe the condition, the situation on the outside of the house with regards to the people, and so forth?

A Well, at this time there were cars all over the lawn and the driveway, and reporters and photographers were both outside and inside the house. Also several deputy sheriffs and people from the Coroner's office, I later found out. I didn't at the time.

Q When you got into the house, did you see reporters in there and photographers?

A Yes. There were reporters and --

Q How many of them were there?

A I have no idea. They were all over the house.

Q They were all over the house?

A Yes.

Q Were there quite a number of them?

A Yes, quite a number.

Q Yes. And how did you know that they were reporters and

photographers?

A There was a gentleman who was staying with Dorothy and me while we were taking the things out of the refrigerator, and one of the men came in and wanted to know our names and where we lived, and this gentleman turned to us and said, "I would be careful what I say because these men are reporters and photographers."

And with that we answered no more questions.

Q Now, then, did you notice Marilyn's purse that day?

A Yes. Dorothy and I were getting the buns, and so forth, from the top of the refrigerator and we looked over to where the bread box is, and Marilyn's billfold was open. And Dorothy and I both remarked about that because it looked as though someone had taken something out of it and just left it in a hurry.

Q I see. And that billfold was where?

A It was on the shelf right next to the bread box.

Q Now, then, you removed some of the provisions, the provisions that would spoil?

A Yes, we did.

Q And did you go anywhere else in the house that day?

A We went upstairs to Chip's room.

Q Did anybody accompany you as you went upstairs?

A This same gentleman from the Coroner's office.

Q And where did you go?

A We asked him if he would please close the door to Marilyn's bedroom, which he did, and then we went upstairs and went into Chip's room and took clothing from his dresser drawers and from the closet.

Q And at that time did you take any of Marilyn's clothes?

A No.

Q And you departed then?

A Yes, we did.

Q Were these people that were there when you came still milling around the house?

A Yes, they were.

Q Did you go back again to that house?

A I went back again on the 6th.

Q That would be Tuesday?

A Yes.

Q And what time did you go there on that occasion?

A I think that was also in the morning about ten o'clock.

Q Did anybody accompany you on that occasion?

A Yes. I had Chip with me and Mrs. R. A. Sheppard, Sr.

Q That is, Sam's mother?

A Yes.

Q When you got there, what did you see?

A Well, when we first arrived, there was no one there, but about two minutes after we arrived there were several cars again. There were two deputy sheriffs that arrived and

another Bay Village police car and several cars of reporters and photographers.

Q Were you able to get in the house?

A Not for about an hour.

Q And did you ask for admission?

A Yes. I had called out at the Bay Village police station to make arrangements to go into the house, and they had told me to be there and that this one patrolman would meet me, and then when I got there the deputy sheriffs also arrived. So that I waited until they were finished with what they wanted to do.

Q And where did Chip and Sam's mother, where were they?

A We were in the yard until the reporters and photographers persisted in annoying us, and then we went to our car.

Q They persisted in what?

A Annoying us.

Q In what way?

A They wanted to take pictures of Chip and Mother Sheppard, and they wanted to know what we were doing and just wanted to find out anything to put in the paper, and so we went to the car.

Q So you sat in the car for a period of an hour?

A Yes.

Q Before you got in the house?

A That's right.

Q And what was your purpose in going in the house on that day?

A I went to pick up clothing so that Sam could go to the funeral.

Q And did you pick up some clothing on that day?

A Yes, I did.

Q And where did you get that clothing?

A Deputy Yettra accompanied me upstairs to the bedroom where I picked up the clothes.

Q The bedroom where Marilyn was murdered?

A No. The bedroom where they slept in the wintertime, where they kept their clothing.

Q That was the room that Hoversten had occupied?

A That's correct.

Q And you got some clothes and went out?

A Yes.

Q And did Mrs. Sheppard come into the house on that day, the mother?

A She only stepped in long enough to ask Sheriff Rossbach if she could do anything about the photographer that took a picture when she had requested him not to.

Q I see. Then you attended the funeral?

A Yes.

Q And the funeral was on Wednesday in the afternoon?

A Yes.

Q And that was at the Saxton Funeral Home?

A Yes, that's correct.

Q That is located where?

A It's on Detroit Avenue.

Q Out pretty far?

A In Lakewood.

Q Was there any scene of disorder around there then when the funeral took place?

A There were television cameras and also photographers and reporters.

Q They were all around there?

A Yes.

Q And after the funeral, did you go to the house?

A Do you mean at any time after that?

Q Yes. Do you recall going back to the house after the funeral?

A No, sir, I don't think I have been back.

Q Now, then, did you get a notice on the 21st of July to come to the Prosecutor's office?

A Yes. I did not receive it direct. They called at Dorothy's house and Dorothy was to tell me to be there.

Q And where were you told to go? To Mr. Mahon's office?

A Yes.

Q And did you prepare to go there on the -- that was to go on the 22nd?

A Yes. We made arrangements to go.

Q On the 22nd?

A I'm not sure of what the date was.

Q Well, if I tell you the date of the inquest started on the 22nd of July, does that refresh your recollection?

A It was the 22nd, then.

Q Now, on the 21st, after receiving that notice to go to the Prosecutor's office to see Mr. Mahon, did you receive another notice?

A Yes. At 11:30 at night we were subpoenaed to go to the Coroner's inquest.

Q What time did you get the subpoena?

A About 11:30.

Q Did you notice in the afternoon paper the editorial of the Cleveland Press, "Why not call an inquest, Dr. Gerber?"

A Yes, I did.

Q And it was that night that you got the subpoena?

A Yes, it was.

Q So did you attend the inquest?

A Yes, I did.

Q Will you describe the conditions around that school, that was at Normandy School?

MR. MAHON: I want to object
to this, if your Honor please. This isn't of
any benefit here.

THE COURT: We are not interested in the setting of the inquest. The objection will be sustained.

MR. GARMONE: He sustained the objection, so you will have to put another question. He is not interested in the surroundings.

Q Did you attend the inquest?

A I did.

Q And where did that inquest take place?

A Normandy school in Bay Village.

Q And in what part of the school?

A In the gymnasium.

Q Who conducted the inquest?

A Coroner Gerber.

Q And who was with him?

MR. MAHON: Oh, I object to this, if your Honor please.

THE COURT: The objection will be sustained.

MR. CORRIGAN: Mark these, please.

(Defendant's Exhibits 6 to 12, inclusive, being photographs, were marked for identification.)

Q I want to hand you, Mrs. Sheppard, Defendant Sam Sheppards

Exhibits 6, 7, 8, 9, 10, 11 and 12. I will show them to the Prosecutor first.

Will you look at these photographs and state whether or not you can identify the scenes that are depicted in those photographs?

A Yes, I can.

Q And what do those scenes -- what scenes are depicted in those photographs?

MR. MAHON: Objection.

THE COURT: I think she may

say what they are.

A These are scenes taken at the Coroner's inquest in Bay Village.

Q During the time that you testified?

A Yes.

MR. CORRIGAN: I introduce them in evidence.

MR. MAHON: Objection, if your Honor please.

THE COURT: The objection will be sustained.

MR. DANACEAU: If the Court please, in order to avoid confusion, I believe one of those exhibits has already been marked previously and it will now have two exhibit numbers.

THE COURT: I know, but that was for another purpose entirely. It will work out.

MR. DANACEAU: All right.

MR. CORRIGAN: Cross-examine.

CROSS-EXAMINATION OF BETTY SHEPPARD

By Mr. Mahon:

Q Mrs. Sheppard, when did you first become acquainted with Marilyn?

A I have known Marilyn ever since about 1940.

Q You knew her then before she was married?

A Oh, yes.

Q Do you know when she first went to California?

A Do you mean to be married?

Q Yes.

A Yes. I was there.

Q You were in California then?

A Yes, I was.

Q And you attended the wedding?

A Yes, I did.

Q And when did you come to Cleveland or to Bay Village or Rocky River?

A We have only lived in Rocky River for the last five years.

Q Well, when did you come from California?

A We came from California in -- it must have been 1946.

Q Marilyn and Sam were married in 1945, is that correct?

A Yes, that's correct.

Q So the following year you came -- you left California?

A Yes.

Q And when did you next see Marilyn?

A I saw Marilyn -- we went back to California in the fall of 1947, and I believe that was the next time.

Q I see. Well, did Sam and Marilyn come to Cleveland in the following years for vacations?

A Yes, they did.

Q Did they come every year?

A I think practically every year. I can't say definitely. I know of two years that they did.

Q Did you ever know of any trouble between Sam and Marilyn?

A No.

Q None at all?

A No.

Q Does the year 1950 strike you in any way?

MR. CORRIGAN: Object. Too remote.

THE COURT: She may answer.

A Well, I don't exactly know what you mean by "strike" me.

Do you mean --

Re 17 Q Well, does it refresh your recollection as to whether or not
ng there was any trouble between Sam and Marilyn?

A No, it does not.

Q It does not?

A No.

Q Did you ever discuss such a matter with your husband?

MR. GARMONE: Objection. It falls
into the hearsay rule unless she was present.

MR. MAHON: I am not asking what
was said. I am asking if there was any discussion.

MR. GARMONE: Between whom?

MR. MAHON: Between her and her
husband.

THE COURT: She may answer yes
or no.

A Well, discussion about what?

Q About some difficulties between Sam and Marilyn.

A No.

Q Did you ever have any discussion with Dr. Sheppard, Sr.,
or his wife, concerning that subject?

MR. GARMONE: Objection.

THE COURT: She may answer yes
or no.

MR. GARMONE: Exception.

A In 1950?

Q 1950, or any other time.

A No.

Q Did you ever have any discussion with Dr. Richard or his wife at any time concerning any difficulties between Sam and Marilyn?

MR. GARMONE: Objection.

MR. CORRIGAN: Objection.

THE COURT: She may answer
yes or no.

MR. GARMONE: Exception.

A No.

Q You never did. All right. What time did you receive the telephone call on July the 4th?

A Approximately 6 o'clock, 6:10, something like that.

Q c Had you been out the night before at all?

A Yes.

Q You and your husband?

A Yes.

Q And you had not seen Sam or Marilyn the night before, though, had you?

A No.

Q What time did you arrive at your home on the night of the 3rd?

A After being out, we arrived back, I suppose, shortly after midnight, perhaps before. I don't definitely know.

Q Did you have any company at your --

A Yes, we did.

Q And who were they?

A Their names?

Q Yes.

A Dr. Foster, Miss Canalis, and Mr. and Mrs. Davis.

Q Did they come home with you when you came home?

A Yes, they did.

Q Were they staying at your home, at your house?

A They were my guests that evening.

Q Stayed all night?

A Oh, no, just for the evening.

Q Did anyone remain there overnight?

A No. Just my family.

Q And they remained, you say, until after midnight?

A Yes.

Q How much after midnight?

A About 2, 2:30.

Q What time did you retire that night, or that morning, rather?

A As soon as our guests left.

Q And then you were aroused again about shortly after 6 o'clock?

A That's right.

Q And you went with your husband to Sam's home?

A Yes.

Q You went in first, and you saw Sam lying on the floor of the

den, is that right?

A Yes, that's right.

Q How long were you there before you left?

A I have no idea.

Q Well, do you know what time you arrived back at the hospital?

A No, I do not.

Q And then you went sometime later back to the house?

A Yes.

Q And was it at that time that you saw this great group of people there?

A That's right.

Q You saw Deputy Sheriffs?

A I don't know that the Deputy Sheriffs were there. I do know the coroner was there.

Q Well, now, Mrs. Sheppard, --

A I know I said that before.

Q You said that before?

A But I did not name them, and I do not know who they were.

Q Well, I am not asking you about naming them, Mrs. Sheppard, but you testified here before that there were deputy sheriffs there. Now, as a matter of fact, there were no deputy sheriffs there, isn't that a fact?

A That is possible. I do not know who the gentlemen were.

I said that this one gentleman I found out later was from

the Coroner's office because I met him there when I went to the Coroner's office.

Q Now, were there any other people that you saw there who you are just guessing at, as to who they were?

A No, I am not guessing. No, I am not.

Q You were guessing about the deputy sheriffs, though, weren't you?

A No, I wouldn't say I was guessing.

Q Well, then, will you tell us how you knew they were deputy sheriffs?

A Because I saw deputy sheriffs later in the day at Dr. Richard's house, and they questioned us and they entered into this case quite a few times. It is very confusing to keep you all separate.

Q Well, Mrs. Sheppard, for your information, if you don't know it, the Sheriff never questioned anybody before the 5th of July. Do you know that?

A That is possible.

Q So that it couldn't -- they couldn't have been there on the 4th, could they?

A I agree.

Q Now, you obtained some clothing at that time?

A That's right.

Q How long did you remain in the house at that time?

A I do not know.

Q When your husband first -- the first time you were there, and your husband, you said, went through the living room to the upstairs?

A Yes.

Q And you remained in the living room?

A In the dining part of that house.

Q In the dining part of the living room?

A Yes.

Q Did you see any disturbance there?

A Yes, I did.

Q And what was it?

A Marilyn's desk was upset. There were drawers pulled out. The top part was down, and there were papers on the floor. Now, the drawers that were pulled out, they were not taken out, the drawers were not taken out, were they?

A Do you mean whether or not they were on the floor or still in the desk?

Q That's right.

A They were just pulled out.

Q They were pulled out, but still hanging in the space where the drawers slide in, is that right?

A Yes, that's right.

Q And those drawers were full of some kind of material, weren't they?

A I didn't notice particularly what it was.

Q How?

A I did not notice particularly what it was.

Q You didn't notice that?

A No.

MR. MAHON: Get me that
photograph.

Q And on the floor not very far from the desk was a pile of papers?

A I wouldn't call it a pile. They were more or less scattered around, as I recall it.

Q Well, they weren't scattered all over the room; they were within a few feet there, weren't they? If you drew a circle of three feet, that would cover the place, wouldn't it?

A I can't answer you that yes or no, because I don't know.

Q Well, there were a number of papers there, weren't there?

A Yes, there were.

MR. GARMONE: Is that the one
you want? State's Exhibit 13.

MR. MAHON: That's right.

Q I want to show you here, Mrs. Sheppard, what has been marked State's Exhibit No. 13, and ask you if you recognize that scene?

A I think that is probably as it was. As I say, I don't recall enough about the exact locations to tell you.

Q Well, does that appear as the papers were strewn on the

floor, as it shows in that photograph?

A I can't tell you if it is or not. My recollection is -- my recollections about that are very vague. I know there were things on the floor.

Q Well, let's look at the desk. This shows the desk also, does it not?

A Yes.

Q And it shows the desk open?

A Yes.

Q And that is what you just testified, that it was open?

A Yes.

Q And it shows the three drawers pulled out but still in their place there, isn't that right?

A Yes.

Q Is that the way they were?

A Yes, I think so.

Q And will you look at this photograph and see if you can see what is in those drawers, or whether or not they are full?

A Yes. They are full.

Q And is that the way they appeared on that morning?

A I did not look.

Q I believe you said, the second time you went back there, you wanted to get clothing -- some more clothing for Chip, is that right?

A On that Sunday, yes.

Q And you did obtain that clothing?

A Yes.

Q And then you went back another day, I believe you said on a Tuesday, the following Tuesday?

A Yes.

Q And on that occasion you wanted to obtain some clothing for Sam for the funeral, I believe you said, is that right?

A That's right.

Q And what did you obtain?

A I obtained a suit for him to wear to the funeral, shoes, socks, underwear, shirt, tie.

Q I see. And that was the last time that you were at the house?

A Yes.

MR. MAHON: That is all.

REDIRECT EXAMINATION OF BETTY SHEPPARD

By Mr. Corrigan:

Q Mrs. Sheppard, I forgot to ask you: Was there a time when Marilyn and Sam lived with you?

A Yes, there was.

Q And when was that time?

A They stayed with us after they had the fire in their home.

Q And for how long a period of time?

A From four to six weeks.

Q I did ask you, did I not, if Sam's little boy was living with you?

A Yes, you did.

Q And he is living with you?

A Yes, he is.

Q That care that you have him in is as a result of the request of his father?

A Yes, that's right.

Q There is one thing that I wanted to ask you that I overlooked.

Did you ever go down at night to the Sheppard home and see Sam and Marilyn skiing at night, in the nighttime?

A I think I have on one or two occasions.

Q One or two occasions?

A Yes.

MR. CORRIGAN: I think that is all,
Mrs. Sheppard. Thank you.

MR. MAHON: That is all.

(Witness excused.)

MR. CORRIGAN: The next witness will
be rather extended, your Honor. Will you want to
start with him this afternoon?

MR. GARMONE: We have moved pretty
good today. I think we are entitled to a little --

THE COURT: You have a suspicious
look in your eye, Mr. Corrigan.

MR. CORRIGAN: At this time of day,
I always have.

THE COURT: Ladies and gentlemen
of the jury, we would only have a few minutes
with the next witness this afternoon. It is
probably not worthwhile, so we will now be
adjourned. Without any formality at all, we
will be adjourned until 9:15 tomorrow morning,
and will you please be very careful not to
discuss this case with anyone?

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(Thereupon at 4:10 o'clock p.m. adjournment
was taken to 9:15 o'clock a.m., Tuesday, December
7, 1954, at which time the following proceedings
were had):

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Tuesday Morning Session, December 7, 1954, 9:15 o'clock, a.m.

MR. CORRIGAN:

Dr. Richard Sheppard.

Thereupon further to maintain the issues on his part to be maintained, the Defendant called as a witness RICHARD N. SHEPPARD, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DR. RICHARD N. SHEPPARD

By Mr. Corrigan:

Q Will you state your name and address?

A Richard Niles Sheppard. I live at 23346 West Lake Road in Bay Village, Ohio.

Q How long did you live at that address?

A It will be about six years this coming January.

Q How long have you lived in this community?

A I have lived in this community since I was eight years old. That would be about 30 years.

Q And what part of the town did you live in?

A When I first moved to Cleveland, we lived in Cleveland Heights, 3062 Euclid Heights Boulevard, Cleveland Heights, Ohio, and after I was married my wife and myself lived on Hyde Park in Cleveland Heights, and in 1949 we moved to Bay Village at our present address.

Q Do you have a family?

A Yes, sir.

Q What does your family consist of?

A I have three children. One daughter, 10; one, 7; and a son who will be 5 this month.

Q How long have you been a physician and surgeon?

A I graduated from medical school in 1941.

Q And after you graduated from school, what was your activity?

A Following graduation, I interned at the Los Angeles County General Hospital, Unit No. 2, for one year, 1941 to '42. From 1942 to '43 I was a surgical resident, Cleveland Osteopathic Hospital here in the City of Cleveland.

From 1943 to 1944, I was the maternity resident for the City of Los Angeles Department of Health and also worked with a clinic group at that time in Los Angeles in obstetrics and gynecology.

Following that I returned to Cleveland and was a surgical resident and fellow in surgery at the Cleveland Osteopathic Hospital with my father for the next three years.

Q Now, then, did you go to Bay View Hospital in the City of Bay Village?

A Yes, sir. The Bay View Hospital was opened, I believe, in October of 1948. Previous to that time our hospital was down on 32nd and Euclid Avenue.

Q How large a hospital is Bay View?

A We consider it a hospital of approximately 120 beds.

Q And do you have any formal connection with that other than that you do your work there?

A Yes, sir. I am on the Board of Trustees and I am also the treasurer of the staff.

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Q Do you belong to any medical associations?

A Yes.

Q What?

A I am a member -- senior member of the American College of Osteopathic Surgeons. I am a member of the American College of Obstetricians. I am a member of the Ohio Society of Osteopathic Surgeons. I am a member of the American Osteopathic Association, the Ohio Osteopathic Association and the Cleveland Academy of Osteopathic Medicine.

Q Do you specialize in any particular branch of work?

A Yes, sir. My work is gastro-intestinal surgery, general abdominal surgery, and I do a great deal of obstetrics.

Q Now, I want to go to a period along about in June of 1954. Will you state to the jury whether you were closely associated with your brother and with your brother's wife, Marilyn?

A Yes, I was.

Q How far did they live from you?

A Well, from Sam -- Dr. Sam and Marilyn lived about three miles, approximately, west of my home on West Lake Road.

Q From the time they came back from California in March, did you have occasion to see them frequently or infrequently?

A March of --

Q This year.

A Yes. I saw them quite frequently.

Q And will you tell the jury what your observation was of these two people when they were together?

A Well, my observation was that they were certainly perfectly happy in every way. They worked together, played together. The family was together at practically all times socially. There were certain professional affairs that took place that they both were involved in. There seemed to be a perfectly normal, happy relationship, as far as I could see.

Q Did you have occasion to see your brother's activities around his home?

A Yes, sir, I did.

Q Will you tell the jury what your observation of those activities was?

A Well, Dr. Sam and Marilyn seemed to be very affectionate. They were -- as I say, they played together a great deal. I have a boat, and many a time this spring, and, of course, years before, also, but this spring, we were talking about -- I would go up to the house by boat, and we would water ski. I didn't do much water skiing myself, but I would do the pulling of the skiers, my wife and myself. We pulled Sam and Marilyn and many other people who were down at the beach. The home there was more or less of an open house, you might say. Many people, friends, and professional

friends, and former high school friends, would come to the house, and Sam and Marilyn were always very wonderful hosts. People would go down to the beach any time, and they would generally find Sam and Marilyn down there if it was a nice day, and there would be a lot of water sports going on most of the time.

Q Now, I am going to call your attention to some dates in June that you have informed me about, and you may refer to any notes you have, if you want to, if you have to refresh your recollection, but the first day I am going to refer to is June the 6th, on a Sunday.

Do you recall that day?

A Yes. June the 6th was my brother, Dr. Steve's birthday, for one thing, and on June the 6th there was a committee meeting at Dr. Sam's home. Dr. Sam was on a program committee for the Ohio Society of Osteopathic Surgeons. They were planning on a program for the fall, some sort of a professional program just for the osteopathic surgeons of the State of Ohio.

Q Did you meet at his house on that day?

A Yes, sir.

Q Who was there?

A My wife, myself, Dr. Sam and his wife, Dr. Steve and his wife, Dr. and Mrs. Gerald Feiner from Youngstown, Dr. and Mrs. Don Udrich from Kent, and Dr. and Mrs. Selnick from

Bay Village.

Q Was that a meeting of doctors that were associated in some way in determining something medically that you met with there that day?

A A part of them were. Dr. Sam, Dr. Ulrich, Dr. Selnick, Dr. Feiner, I believe were on this committee. Dr. Steve and I were there because we felt that we'd like to entertain these out of town doctors, and we planned on having a little picnic and some lake sports before they had their meeting.

Q Did you have a picnic that day?

A Yes, we did.

Q And then I call attention to the 10th of June. Do you recall that day?

A Yes, I do.

Q And what particular event took place on that day, and did you see Marilyn and Sam on that day?

A Yes, we did. On the 10th of June, my parents moved from Cleveland Heights to Bay Village. They had lived in their home, as I say, in Cleveland Heights for 30 years. In fact, Sam had been born in that house in Cleveland Heights, and the moving vans brought the material over from Cleveland Heights, and Dr. Sam and Marilyn, and myself and my wife, and a little later, Dr. Steve and his wife, went to my father's home, which is immediately east of the hospital, and we all pitched in and helped set the various

furniture, and so forth, around.

Among some of the things that were brought over from the East Side were some things that belonged to each one of us individually. I know in Dr. Sam's case there was a desk and a chair and some other items that belonged to Dr. Sam. I know there were some bookcases that my parents wanted me to have. We put those things in our various cars and took them home after we had helped the family place the furniture around the house.

Q Do you recall that Sam on that particular day received a desk from his mother?

A Yes, sir.

Q And took it home?

A Yes, sir.

Q And did you notice Marilyn on that day and Sam on that day and what their attitude was towards one another and how they appeared?

A Yes. They were very happy. We were all very happy that the folks were moving over to the west side. It would mean that my father wouldn't have to travel back and forth so far. Sam and Marilyn were very happy, very cooperative, very helpful. They were perfectly normal in every way. I helped Dr. Sam unload the desk on the jeep, in fact.

Q I call your attention to the 12th of June, did you see them on the 12th of June?

A Yes, I did.

Q Where did you see them on that particular day?

A Well, on the 12th of June, which was a Saturday, I took my boat, which was a small cruiser, and with a friend of mine, Mr. David Phillips, went to Put-in-Bay. I had never been that far with my boat before, and I knew that Dr. Sam and Marilyn were at Put-in-Bay --

Q Well, now, did you see them there?

A Yes, I did.

Q I don't want details that don't help us any on this particular case. So leave them out, Doctor, any details that we don't want to be spending time on.

A All right.

Q But did you see Sam and Marilyn at Put-in-Bay?

A Yes, I did.

Q How long did you stay there?

A We were there three to four hours, I believe. We had planned on staying longer, but shortly after I arrived and saw Dr. Sam and Marilyn, I heard that Dr. Sam had received a telephone call from Cleveland that there was a serious accident to a child and Dr. Sam was trying to make arrangements to get back.

Q Well, did he get back?

A Yes, he did. He flew back.

Q He flew back?

A Yes, sir.

Q That was to some emergency at the hospital, is that correct?

A Yes, that's right.

Q And you remained up there?

A I remained for a short time and then returned by boat.

Q All right. Now, then, did you see them on the 23rd of June?

A Yes, sir.

Q What was the occasion that you saw them on that particular day?

A On that particular day my wife and myself had guests from the east side, Dr. and Mrs. Ronald Dysinger, and we were out boating and went by Dr. Sam's house and, as oftentimes we did, Dr. Sam water skied behind the boat and Marilyn

was down at the beach. Everybody seemed perfectly happy and pleasant.

Q Was Marilyn skiing that day?

A I don't recall for sure at that time.

Q All right. Now, on the 28th of June, that would be Monday, the 28th of June, did you see them on that day?

A Yes, sir.

Q Where did you see them?

A That evening we had at the hospital an interns' dinner. The interns were, most of them, finishing up their year's work and we had a little ceremonial dinner. Marilyn came to my home that evening just before dinner and went over to the hospital with my wife, as I recall. Dr. Sam was out of town, I believe, in Youngstown, operating that afternoon and returned and met us at the hospital. That evening was very, very pleasant.

As I say, that was the interns' ceremonial dinner.

Q On June 30th, did you see Marilyn?

A Yes. On June 30th I did. On the morning of June 30th was a Cleveland Yachting Club Orphan's Day. Reverend Kreke was my co-pilot. That morning we took orphans out and came back and then Reverend Kreke's family and my family took a picnic and went up to Dr. Sam's home, and there was water skiing and water sports, and the children all went swimming on Dr. Sam's beach at that time.

Q And what children were they?

A Reverend Kreke's children and my children and Chip, Dr. Sam's little boy.

Q I see. Now, then, who is Reverend Kreke?

A Reverend Kreke is the pastor of the Bay Village Methodist Church.

Q Now, on Thursday, July 1st, did you see them?

A Yes, I did. On July 1st, Dr. Sam and I both got through with our work a little earlier, which was rather unusual, and on the spur of the moment we decided it would be nice -- I had been swimming so often at Sam's beach -- that we would go down to the Cleveland Yachting Club swimming pool. We went home and picked up Marilyn and little Sam, Chip, and I took them with me down to the Cleveland Yachting Club where we had a very pleasant afternoon, a couple of hours.

Dr. Sam spent a great deal of time in the water with Chip teaching him to swim under water, above water, to dive, and so forth. Marilyn was in the water, briefly, but she spent most of the time sunning herself out on the deck.

Q And Sam was teaching the little boy how to swim?

A Yes, sir.

Q Now, then, on Friday, July 1st -- or July 2nd, that was the day in which the three brothers and their wives met at Steve's?

A That's correct.

Q For a dinner?

A That's right, that evening.

Q And was that the first time that you discovered that Marilyn was going to have a baby?

A Yes, sir, that's right.

Q And how did you discover that, Doctor?

A The wives were in the kitchen preparing the meal. I stepped into the kitchen and put my arm around her waist or around her shoulder, and she turned to me and said, "Well, you know, don't you?"

I said, "No. What do you mean?"

She told me then that she was going to have a baby, and I was somewhat surprised, and I know that the rest of the family kidded me a great deal about it because I am the one of the group that does most of the obstetrics. And they thought it was pretty funny that I was the last one, practically, to know about it, of the family.

Q And it was stated that then you had sort of a celebration about the baby?

A Yes, that's right. Everyone was very, very happy about it. Dr. Sam certainly was very much pleased about it and Marilyn certainly was. There was quite a bit of discussion. It was a very, very pleasant evening.

Q Now, did you see them on the 4th of July -- or the 3rd of

July? That would be Saturday.

A Well, yes, I did, but I saw Dr. Sam later, later on on the evening of July 2nd after this --

Q Well, tell the jury about that?

A On the evening of July 2nd about 11 o'clock, a little earlier than that, Dr. and Mrs. Carpenter, who had been a previous intern at the Bay View Hospital and who had returned from his practice in Texas, dropped in, but about 11 o'clock Dr. Sam and Marilyn went home to relieve their baby sitter. We had talked about taking a ride in the boat in the lake, and after they went home we told them -- or, at the time they left to go home we said that the rest of the party were going to go down and take a boat ride and we would come up by their house and say hi, which we did. And on the way up to Dr. Sam's house the lake started to act up quite a bit, we started getting quite a big wind from the northeast. And after we got off Sam's beach, Dr. Steve whistled and hollered, and Sam then came and -- turned on the light and then came down to the beach.

And while we were waiting, the wind was coming up quite a bit and the boat got in a little too close to the shore. I was quite concerned about it. Dr. Sam peeled off his trousers and came running out into the water with his shorts on and held the boat off while we

talked briefly. We tried to talk Dr. Sam into climbing into the boat and coming on back to the Yacht Club with us and then we would take him back home again in one of our cars, but he said that Marilyn was alone and he didn't think that he should come along with us.

Q Now, coming to Saturday, did you see Sam on Saturday at the hospital?

A Yes, briefly. Dr. Sam was busy in surgery that morning. I just saw him more or less in passing. I have office hours downtown at 11 o'clock on Saturday. I was in the hospital making my rounds and I saw him briefly in the operating room.

Q How did you get the information about the fact that this terrible tragedy happened at your brother's home?

A Well, at approximately 6 o'clock in the morning of July 4th, I received a telephone call. I was sound asleep.

I was awakened from a sound sleep, and it was Mayor Spencer Houk. He seemed to be quite excited as he called, and he said, "Rich, get up here as fast as you can. Sam's badly hurt, or hurt and Marilyn -- and I think Marilyn is dead."

I may have asked him to repeat it. I'm not sure.

Q Did he tell you any of the details in that telephone call?

A No, sir.

Q Except the fact that Marilyn was dead, did he tell you

how she was dead or anything of that kind?

A Not that I recall.

Q I see. And you immediately then went to the house?

A Yes, sir. I woke my wife, or I believe she heard the phone call, and then I told her -- I immediately got up and started to dress as rapidly as I could, and while I was doing that I was telling her the gist of the conversation, and I told her that I wanted her to call Dr. Steve immediately and ask him to join me at the house, that I was going on ahead, and that also to call my father and ask him to go to the hospital so that he would be present in case there was an emergency that I brought in, that he could have the interns and house staff ready for any emergency I might bring in.

4 Q Now, when you arrived at the house you went alone, did you?

ME A Yes, sir, I did.

Q When you arrived there can you tell about what time it was?

A Well, it couldn't have taken me more than 10 to 12 minutes to get dressed and get up there. Probably around 6:10. I didn't look at my watch, but it must have been around 10 minutes after 6 or 12 minutes after 6 when I got there.

Q And when you arrived at the house, what did you see as you approached there?

A As I approached the house I saw several cars in the driveway, automobiles, at least one of which was a police cruiser. I believe there was an ambulance there, and then another car or two. There may have been two police cars, I'm not positive. There were three or more cars.

Q What door did you go in?

A I went in the Lake Road door, the door on the Lake Road, which is their back door.

Q Was there anyone inside the house?

A Yes, sir. There were several people.

Q Can you recall who they were?

A Yes, sir. I saw the Mayor and Mrs. Houk. They were the first people I saw. They were standing in the hallway between the -- in the dining room entryway, and beyond them there were two or three other people, I think an

officer or two, and there may have been one or two others that I don't know who they were. They must have been the firemen.

Q Did you notice, as you entered the hallway, the medical bag that has been described in this case as being upset?

A Yes, sir, I did.

Q And did you notice whose medical bag it was?

A Yes, sir. It was Dr. Sam's.

Q Did you examine it afterwards, or at any time?

A Well, later on I skirted it. I didn't touch the bag at all or anything that was spilled out on the floor, but I did kneel down and just look at it superficially to see what was spilled out.

Q We have a bag here that has been introduced as Defendant's Exhibit ZZZZ. Will you look at it?

A Yes.

Q Do you recognize it?

A Yes, sir, I do.

Q What is it?

A That is Dr. Sam's medical kit.

Q Is that the one that was dumped in the hall?

A Yes, sir, that is the bag.

Q What was the first thing that you did when you went into the room -- as you entered the hallway?

A Well, as I entered the hallway I took in at a glance --

I saw the medical bag spilled out on the floor, Mayor and Mrs. Houk standing behind it toward the lake side. I glanced into the library door and I saw Dr. Sam.

Q What position was Dr. Sam in at that time?

A Dr. Sam was sitting in a red leather chair, which was north of his desk. He was clasping his hands behind his neck like this, and leaning to one side or the other, I don't remember which side, and moaning and crying.

Q Did you notice his face?

A Not closely at that time. I didn't step into the room at that time.

Q You just knew that he was there?

A I knew that he was there, and I could see that he was alive.

Q What was the next thing you did, Doctor?

A I asked someone, I believe it was Mrs. Houk, I said, "Where is Marilyn?"

And she indicated or pointed and said, "Upstairs, upstairs."

I turned and went through the kitchen as rapidly as I could. I went up the small landing, the first two or three steps on the --

Q Was there anybody in the kitchen?

A There was an officer following me. There may have been someone else, but no one else that I recall at the moment, at that particular time, but I know there was a police officer

following me.

Q And you went upstairs?

A I stopped on the landing. I turned to the police officer who was behind me and asked him if there was a kitchen knife handy right close, and there was a magnetic rack off the sink. He grabbed two of them and handed them to me, and I proceeded up the steps as rapidly as I could.

Q Somebody handed you a knife?

A Two knives.

Q Did you have a purpose in that?

A Yes, sir, I did.

Q What was it?

A The message that I had gotten from Mayor Houk said he thought Marilyn was dead, and on my way up the steps the thought went through my mind that there might be a possibility of cardiac massage or cardiac resuscitation.

Q What does that mean?

A Well, that is a method, if death has just occurred anywhere from three to five minutes, you are sometimes able to, by cardiac massage, open an incision over the heart, massaging the heart to restore life again.

Q Has that ever occurred in your experience?

A Yes, sir, it has. I have done this procedure on two or three occasions quite successfully.

Q Successfully?

A That's right.

Q When you got up into the room tell the jury what you saw.

A Well, at the top -- I went up the steps. As I got to the top of the steps I could see the room directly ahead of me, I could see a part of Marilyn's arm hanging off the side of the bed. I stepped in and, of course, I was quite stunned at what I saw. Marilyn was lying in bed. Her face was not recognizable to me. I knew who she was, of course, but I would not have recognized her otherwise.

Q Now, you saw this terrific picture of Marilyn dead?

A Yes, sir, I did.

Q Did you notice the position of her hands?

A Yes, sir, I did.

Q Will you state what you noticed about her hands?

A Her right arm was hanging off the side of the bed out into the room, palm up. I took her pulse on that arm. I opened my medical kit and --

Q Did you determine she was dead?

A Yes. I listened to her heart with a stethoscope.

Q Now, then, after you had determined she was dead did you make any other observations around the room at that time?

A Yes. I lifted the sheet and looked at the lower part of her body, mainly attempting to see if there were any other injuries. I noticed that her left arm was lying at her side. I could see the doors on the -- that would be the

east wall, the door to the bedroom was open, and the door to the closet, which was right next to it, were splattered with a considerable amount of blood. There were flecks and specks on the north wall and shade. There were a number of flecks over on the far wall.

Q Well, after you had observed those things, what was the next thing you did?

A I returned downstairs -- or, no. First I believe I stepped down the hall briefly and took a brief look into Chip's room to see if he was all right.

Q Was the door open or closed?

A I don't recall.

Q Did you go into Chip's room?

A As I recall, I stepped into the room just momentarily and saw that he was apparently sound asleep, lying on his right side.

Q At that time did you see the stretcher up in the hallway, do you recall?

A I don't remember seeing the stretcher up there.

Q Well, after making that determination you went downstairs?

A Yes, sir.

Q Where did you go when you went downstairs?

A I went into the library or den, and Dr. Sam was in essentially the same position as I had seen him a few moments before.

Q Had Steve arrived at that time?

A No, sir.

Q Now, when you went into the den, was Sam still in the same position that you had noticed him on the first occasion?

A Yes, sir. He was still --

Q Was there anybody in the den beside Sam?

A No one in the den, no, sir.

Q You had some conversation with Sam at that time?

A Yes, sir. I don't remember my exact words. I asked him where he was hurt the most, or where -- what was the problem, mainly. He indicated that his neck was the main point of pain. I said to him that, "Marilyn was gone, there's nothing I can do," and with that he slid onto the floor on his face and said, "Oh, God, no."

Q And then when he slid on his face on the floor, what was the next thing you did?

A I stepped out of the room. I believe I went into the kitchen. It was either at that time -- I believe it was at that time that I saw the two knives. I had given them back to Officer Drenkhan who had followed me upstairs on my first visit, and for some reason, I don't know, I picked up those two knives, replaced them back in the magnetic rack in the kitchen, and either Mrs. Houk or one of the officers, someone, was in the kitchen. I believe I talked with them to see, well, what had happened. I could see the house was all messed up, and I at that time I believe got

the story that someone had entered the house, and that Sam had followed someone to the beach and had been hit --

Q What was that?

A At that time I say I think I got the story from one of the others that someone had entered the house and Sam had been hit and followed someone to the beach and been hit.

Q You learned that there in the kitchen there that morning?

A I believe that is correct.

Q Do you recall what you did after you had this conversation in the kitchen?

A Yes, sir. About that time I saw Dr. Steve and his wife enter the hallway. Dr. Steve went on into the -- beyond the doorway and on up through the living room, apparently. I intended to follow him or go with him up the steps, but at about that time I received -- someone called me to the telephone. I believe it was Mrs. Houk.

Q Do you know who it was that called you to the telephone?

A I don't recall for sure. It was one of the officers or Mrs. Houk, it seems to me.

Q No. But I mean do you know who it was that was on the telephone?

A Oh, yes, sir. Dr. Brill, one of the interns from the hospital. He called me, and he wanted to know if there was --

Q Well, never mind what he said. Did you see Dr. Dozier and

Dr. Carver arrive?

A I don't recall see Dr. Carver. Everything was certainly in a very confused state at that time. I do remember talking with Dr. Dozier, and I understand they arrived together.

Q Did you do something there about that time in relation to the little boy, Chip?

A Yes, sir.

Q Tell what you did.

A Well, after this phone call I went upstairs again, and Dr. Steve was in with Marilyn. I believe he was in the process of trying to take her pulse. He stepped out of the room. I mentioned to him that, as I recall, "I will go ahead and take care of Chip. I think he should be taken out of the house, and you see what you can do for Dr. Sam. Perhaps he should go to the hospital," or words to that effect.

Mrs. Houk was upstairs in the hallway at that time, or had followed me up, and we discussed the advisability of taking Chip out. We both went into Chip's room, and I attempted to awaken him.

Q He was still asleep, was he?

A He was still asleep, yes. I attempted to awaken him. He was very groggy. As I sat him up in bed, I saw this orthopedic or orthodontic brace that he wears at night,

and I had some little difficulty getting it off.

Q Is that some teeth straightening device?

A It had to do with protrusion of the chin, and he had -- his lower jaw was protruded and his bite didn't come properly together, and it was an attempt to adjust that, that that was being worn, as I understand.

Q That was something some dentist had prescribed, I suppose?

A Yes, sir.

Q And during the period that you were taking that off did he wake up?

A No. I can't say that he woke up. I had to hold him from flopping over into bed. His head would loll around, and he was extremely sleepy and very, very groggy. I finally got this brace thing off of his face, and at that time Mrs. Houk was gathering up a few items of clothing, I think just the things that he had taken off the night before and a little bathrobe, or something, to throw around him, and then we half carried, half walked him down the stairway through the kitchen and out.

Q Did he wake up?

A No, sir, not at that time. He was even quite sleepy in the car on the way down to my home.

Q Did you then take him somewhere?

A Yes, sir. I took him to my home.

Q After you took him to your home did you return to your

brother's home?

A Yes, I did. That was a little later, however.

Q Did you come by yourself the second --

A No, sir. The second time, Dr. Steve and I came together.

Q Well, now, let me see. You took Chip to your home.

Did you go someplace after you got to your home?

A Yes, sir. I returned to the hospital, or went over to the hospital. Dr. Steve was there. I stepped in to either the X-ray or out into the hall to the X-ray, and I saw Sam briefly. I believe I mentioned to Sam that I had taken care of Chip and everything was all right, but he didn't respond or answer me at all.

Q Where was Sam at that time?

A Either in X-ray or on the cart just leaving X-ray, or on the way into X-ray. It was in or about the X-ray department.

Q Now, were you there when Dr. Gerber arrived?

A Yes, sir, I was -- you mean at the hospital or at the house?

Q After you knew that Sam was in the Bay View Hospital did you return to the Sheppard home?

A Yes, sir, I did.

Q And that is the time you went with Steve?

A That's correct.

Q And when you arrived the second time that morning, can you tell about what time that was?

A It probably was in the neighborhood of 7:30.

Q And what was the scene there then?

A Well, there were a number of people there. There were neighbors, people standing around the lawn, across the street. There were a lot of onlookers, it seemed to me, and there were a number of police and firemen.

Q When you returned the second time, did you return to Marilyn's bedroom?

A Yes, sir, we did.

Q And made a further observation of the situation there?

A Yes, sir.

Q And then what was your activity after that?

A In the bedroom?

Q No.

A After Dr. Steve and I --

Q There wasn't much you could do in the bedroom, was there?

A Pardon me?

Q There wasn't much you could do in the bedroom, was there?

A No, sir, there wasn't.

Q When you arrived that second time, did you see Dr. Dozier?

A No, sir, I saw Dr. Dozier on the first visit.

Q The first visit?

A That's right.

Q What did you do? What was your activity then after you came back the second time?

A Well, after Dr. Steve and I went up to the bedroom and looked about there, we went into the various rooms in the upstairs.

Q Well, you looked around the house?

A That's right. We even went to the basement.

Q And discovered nothing that would be helpful to us?

A Nothing that I know of.

Q Now, then, were you there when Dr. Gerber arrived?

A Yes, sir, I was.

Q And after he arrived, did you go outside the house?

A Yes, sir. I was sitting on the porch, I believe, with Mrs. Houk, and there may have been a couple of others. We were smoking a cigarette. Dr. Gerber came through the house. He came out on to the porch and seemed to be rather brusque. He ordered us all out of the house and off the porch, and I stepped up to him and introduced myself and told him I was Dr. Richard Sheppard. He didn't seem to acknowledge the introduction.

Q Well, after he ordered you all off and you stepped up and told him you were Dr. Richard Sheppard, did he have any conversation with you?

A None whatsoever that I recall, no, sir, other than to ask us to get out of the house and off the porch and clear on out on the lawn.

Q Now, after you were out on the lawn, did you participate in any activity at that time?

A Yes, sir. Well, previous to that time Dr. Stephen and I, after we left the house, looked around on the outside, previous to Dr. Gerber's arrival. Dr. Steve went down to the beach and looked around the beach house. I saw Police Chief John Eaton. He was also looking around the wood pile and in the summer house, and so on, and I asked John Eaton whether or not anyone had gone upstairs into the apartment above the garage. He said, no, he

didn't think so.

and so Chief Eaton and myself went in the garage and went up the steps that are in the garage and went up to the apartment above the garage, looked about up there, saw nothing of significance at all, and returned down to the lawn.

About that time Dr. Stephen came up from the beach and mentioned to Chief Eaton that he had been looking around under the deck and had seen two pair of work gloves, and one of them had a lot of little red splotches on it that later Dr. Steve told me he thought looked like paint.

And then he, Dr. Steve, and Chief Eaton returned down the steps apparently to retrieve these gloves. I also went down a few moments later, down to the beach, and looked around and walked around, looked underneath the beach house and saw nothing of significance.

Q Did you walk down on the beach?

A Yes, sir, I did.

Q How far did you walk on the beach?

A Not far. I walked west as far as Sam's property and east about halfway, probably, to the Huntington Beach pier.

Q Now, you say you went upstairs and looked up over the garage?

A Yes, sir.

Q Were you familiar with the fact that Sam had a lot of boys

that used those rooms up there as sort of a club house?

A Yes, sir, I was.

Q And they were neighborhood boys?

A Yes, sir. Pardon me?

Q Neighborhood boys?

A Yes, sir, that's correct.

Q Now, after searching around the property, as you described, did you leave the property and go to Bay View Hospital?

A Yes, sir. Dr. Steve and I, of course, had heard and knew that Dr. Gerber had been called, on our first visit, and that was really the main reason we returned, was to try to help --

Q I can't hear you.

A I say, we knew at our first visit to the house that Dr. Gerber, the Coroner, had been called, and we returned to the house the second time mainly with the idea that we would like to be present when he arrived to be helpful in any way we could. And after Dr. Gerber was at the house for a brief time he and Chief Eaton, I believe, left for the hospital. So Dr. Steve and I followed him.

Q Well, Dr. Gerber didn't seek your help, did he?

A No, sir, he did not.

Q Now, you went to Bay View Hospital after Dr. Gerber?

A That's right, yes, sir.

Q What did you observe when you got to Bay View Hospital?

A When I got to Bay View Hospital --

Q That would be the second time that you went there that morning?

A That's right. Dr. Gerber had preceded Dr. Stephen and myself to the hospital. Dr. Steve, I believe, went on down the hallway and Dr. Gerber, I believe, went on in to see Dr. Sam. I was not in the room at that time. Dr. Gerber was in the room with Dr. Sam for a brief period of time and then returned back up the hallway. I was up near the switchboard. And he asked for Dr. Sam's clothing, and my father brought the clothing to him, gave it to him, the trousers and shoes, socks, and --

Q Now, you were there when the trousers were handed to Dr. Gerber?

A Yes, sir, I was.

Q Now, this is State's Exhibit 25. Do you recognize them?

A Yes, sir.

Q Sam's trousers?

A That's right.

Q Now, when you stood by the bed, where did the knee of your trousers come in reference to the top of the bed, top of the mattress?

A My knee was above the edge of the bed. It would be about -- the bed was a little lower than this, actually (indicating).

Q And you observed the blood spots all around the room?

A Yes, sir, I did.

Q And on the walls, and so forth?

A I certainly did.

Q Would it be possible for a man wearing these pants to stand alongside that bed and murder Marilyn and have no spots showing on the pants?

A I would say absolutely not, sir.

Q Now, after you observed Dr. Gerber get a hold of these articles, what was the next thing you did?

A Well, Dr. Gerber wanted to have the contents of the pockets, and my father had removed the contents of the pockets and he gave these items to Dr. Gerber. He handed the wallet to Dr. Gerber. He took it out of one of his pockets, my father did, and handed it to Dr. Gerber, told him this is his wallet.

Dr. Gerber took the wallet and opened it. There was nothing in the money compartment of the wallet whatsoever except the check that has been spoken of, I guess, before here, and it was all water soaked and the entire wallet was just soppy. Dr. Gerber very gently and with my father's help, as I recall, gently removed this check from the wallet, and at that time my father also took three one dollar bills out of another pocket and gave them to Dr. Gerber and said that he had found those in the bottom of one of these trouser's pockets, but not in

the billfold.

I believe there were one or two other items. I think a handkerchief and a prescription pad, something of that kind. I'm not sure about the others.

Q Now, the three of you, the three doctors were standing there with Dr. Gerber. Was there any attempt made by him to find out what you knew about the matter?

A None whatsoever, sir, that I know of.

Q And after you went away, or after he went away, where did you go?

A Well, that certainly was a very confusing day. I would have great difficulty in pinpointing my activities for the rest of that day, but I was in the corridor of the hospital. I dropped in to see how Sam was getting along. I saw later some detectives arrive, and they were in with Sam for a while.

Q Now, where you there when Mr. Schottke and Mr. Gareau arrived?

A I was there either when they arrived or shortly thereafter. I knew they were there.

Q Did you have any conversation with them?

A I had a brief conversation with one of them.

Q Do you know which one?

A It seems to me it was Mr. Gareau.

Q And did they inquire as to going into Sam's room or what?

A No, sir. In fact, Mr. Gareau, I believe it was, mentioned that he had had a child who had been taken care of as an emergency in Bay View Hospital some time previously.

Q Well, did you see them go into Sam's room?

A Yes, sir.

Q And that was in the morning?

A Yes, sir.

Q How long were they in the room?

A I couldn't estimate that, Mr. Corrigan. I don't really know.

Q Well, was there any attempt of any kind to prevent them from going into the room?

A No, sir, none whatsoever.

Q And they were in there for some time?

A They were in there for some period of time, yes.

Q You didn't go in?

A No, sir, I didn't.

Q Then did you see them later in that day?

A Yes, sir. They returned later in the afternoon. Dr. Sam, as I recall, at that time was in Room 115, which is at the end of the corridor. It's a private room. And they went into the room.

I was there, Dr. Steve was not at that time, as I recall. They mentioned to me something about going into the room, and I believe that I ushered them down into the

room, showed them to the room. They said they wanted to talk to Dr. Sam alone, so I stepped out of the room and was in the hallway outside and on the fire escape when Dr. Stephen arrived.

And I told him that they were in the room talking to Dr. Sam.

Q And how much time did they spend in the room on that occasion?

A Well, it was well over an hour.

Q Now, did you observe, make an observation as to the condition of your brother on that day?

A That morning I looked at him and, of course, later on in that day. Do you want me to describe what I saw?

Q Yes.

A The first thing in the morning when I first saw him he had a large bruise over his right forehead and right cheekbone. The lip was -- his lip was bruised and there was considerable amount of blood coming out of the corner, the right corner of his mouth.

Later on in the day when I saw him, the bruises had swollen quite considerably. His right eye swelled completely shut, or practically so, and he was complaining continually of pain in the back of his neck.

Q Now, you didn't prescribe for him?

A No, sir, I did not.

Q You don't classify yourself as his physician?

A No, sir. One man, to our way of thinking, has to be in charge of a case. He may ask consultants, but one man and one man alone is in charge of a case, and it would just confuse the issue to have anyone else come in and have anything to do with it unless asked by the physician in charge.

Q Did you see the police there on Monday?

A Yes, I believe I did.

Q Now, then, on the 5th of July, did you go to the house?

A On the 5th?

Q Look at your notes.

A I don't believe that I went up there on July 5th. Let's see. (Witness refers to notes.)

Oh, yes. Yes, I did. I drove my wife up there.

Q Before I come to that, I will hand you a picture which is marked Defendant's Exhibit S, and ask you to look at it and ask you if that shows Sam as he appeared sometime during that day?

A Yes, sir, it does. In fact, the police photographer took this picture while I was present.

Q And what time of the day was that picture taken, do you know?

A I can't tell you exactly, but it was in the morning.

Q In the morning. Now, on the 5th of July, did you go to

the house?

A Yes, sir. I drove my wife up to the house. She was going to get some clothing for Marilyn to be used at the funeral home.

Q And when you went in the house, did you see any people in the house?

A Yes, sir, I did.

Q And who was in there?

A Mrs. Nancy Ahern was in the living room, and there were several police officers talking to her, and Police Chief John Eaton was with us, with myself and my wife.

Q Did you see reporters and photographers around there?

A There were a number of them on the outside of the house. I don't know whether there were any in the house or not. I didn't recognize any of them.

Q I see. Well, as a matter of fact, every time you moved you were surrounded with reporters and photographers?

A That certainly is correct.

Q What?

A That is absolutely correct.

Q Was there anything that occurred in front of your home during this time?

A Yes, sir. For the entire period, in fact, through July and August it was the most terrifying and the most frightening type of a situation that I have ever

experienced.

Q In what way?

MR. PARRINO: I object to this,
your Honor.

THE COURT: The objection will
be sustained.

Q What occurred?

MR. PARRINO: I object, your
Honor.

MR. MAHON: Objection.

MR. CORRIGAN: Why, it's all
part of the picture.

MR. PARRINO: But I am objecting,
nevertheless.

THE COURT: The objection
will be sustained.

Q When you went into the house, were you accompanied by
police officers on the 5th?

A Yes, sir. Police Chief Eaton.

Q Now, then, on the 6th of July, did you go to the Village
or to the City Hall?

A Yes, sir. In fact, I was unable to be present at the
funeral home that evening because I was at Bay Village
City Hall giving a statement of what I knew about it
and what occurred that day.

Q So that you had to go to the Village Hall instead of to the funeral home?

A That's right, that evening.

Q When did you arrive at the Village Hall or the City Hall and when did you leave there on Tuesday, the 6th?

A Well, I believe -- I can't tell you the time exactly. We were there fairly -- it was in the afternoon, rather late. There was, as I recall, a meeting. There was some discussion between Dr. Gerber, Mr. Petersilge, and my father was there and I was there, regarding interrogation of Sam. There was a lot of legal business that I was not too familiar with. It was in Mayor Houk's office. It was after that discussion that we proceeded down to the basement of the City Hall and gave our statements, Dr. Sheppard, Sr., my father, and myself. We were there the whole evening, from the afternoon right straight through.

Q The whole evening and afternoon?

A It was late afternoon and evening, yes.

Q And was Dr. Gerber there, too?

A Earlier. He was not down when we were taking statements, but he was in this meeting upstairs, yes, sir.

Q Now, then, that would bring you to Wednesday. Were the reporters around there, then, when you were being interviewed?

A At the Bay City Hall?

Q Yes.

A Yes, sir. Yes, they were. In fact, when we were having our meeting, they were climbing up the windows, and so forth.

Q What were they doing climbing up the windows?

A Apparently trying to hear what the meeting was about.

Q And that was the type of questioning that was being carried on, under those conditions?

A That's correct.

Q And apparently with the approval of the authorities?

MR. MAHON: Oh, I object to
that, if your Honor please.

THE COURT: Objection sustained.

MR. CORRIGAN: Exception.

Q You went to the funeral on Wednesday?

A Yes, sir. I was at Marilyn's funeral on Wednesday.

Q And were you in the vehicle with Sam when he went to the funeral?

A No, I wasn't with Dr. Sam. I was in another car.

Q Did you see that he was accompanied by a police officer when he went to the funeral?

A Yes, sir, that's correct. Sergeant Hubach was with him.

Q And what is the fact as to whether or not there was a police officer in front of that door from Sunday afternoon

until he was released from the hospital?

A There was a police officer in attendance outside the door of Dr. Sam's room at all times that he was in the hospital.

Q Were you present on Thursday when Sam was questioned by police officers for a long period of time?

A I was not in the room. I was in the hospital, in and out.

Q You know that fact occurred?

A Yes, sir, I do.

Q And on the 9th, do you remember that Sam went to his home?

A Yes, sir.

Q With the police officers. Did you see him that evening?

A Yes, I did. I saw him afterwards.

Q And where did you see him after he was questioned at the hospital?

A That's on the 9th or on the 8th?

Q That would be on Friday.

A That was the day he went up to the house. I believe he returned to my father's home that evening.

Q Well, let me go back to Thursday evening, the night before, when he was taken to your father's house. Were you over there that evening?

A Yes, sir. I was in and out of the house on that evening.

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Q Did you see any police officers over to his house, over to where he was, over to his father's house, rather?

A After he left the hospital and was taken home, there were no police officers over there that I recall.

Q Well, do you remember fingerprints being taken on that night?

A I believe the fingerprints were taken in the afternoon, or late afternoon of July the 9th, yes, sir. I was at my father's home at that time, and Dr. Steve and his wife, my wife, myself. Dr. Sam and little Chip was there. That was the afternoon that -- I don't believe Dr. Sam was there. I believe he was up in the house, going through the house at that time. I believe he was not present, but Chip was. That was the afternoon that Detective Rossbach interrogated Chip, and he fingerprinted or palm printed all of us.

Q At least, everybody was fingerprinted that afternoon?

A That's correct.

Q And little Chip was there?

A That's right.

Q Now, I call your attention to July the 11th.

A Yes, sir.

Q Do you recall that on July the 11th Sam was at your house?

A He was at my home for dinner, that's right, in the evening.

Q And did anything attract your attention in regard to Sam's physical condition on the 11th of July?

A Yes, sir.

Q Will you tell the jury?

A Yes, sir. We were eating and passing food, of course, from one person to another, and a serving dish was handed to Dr. Sam. He took it in his left hand, as you normally would, and he justabout broke the dish, he dropped it.

Q What?

A He just about broke the dish, he dropped it. His hand was apparently weak, and he couldn't hold it firmly.

Q Did that occur in any other occasion?

A Yes, sir. That happened on two or three occasions.

Q When was the next time that you noticed that he couldn't control his left hand?

A On July the 15th, my wife noticed it, and I was present.

Q Now, during that time, and up to the time of the inquest, which took place on the 22nd day of July, did the police interview Sam, as far as you know, or were you present at any of the interviews that took place between the police and Sam?

A I was not present at any interviews that took place, that I recall, with Dr. Sam.

Q Now, along in that time do you recall an interview that took place over in Fairview Village or Fairview City?

A I heard about it. I was not present and did not know about it, I don't believe, at the time.

Q You were called by Mr. Mahon and Mr. Parrino down to their

office, were you not?

A Yes, sir, I was.

Q And when did you come down to their office?

A Well, let's see, I believe that was during the morning of July the 9th. Both Dr. Steve and myself were called to the prosecutor's office, and Mr. Parrino and Mr. Mahon talked to each one of us separately.

Q And did you make a statement to him?

A Yes, we made a statement.

Q As to what you knew about this matter, to these gentlemen?

A Yes, sir, I did.

Q Did they call you to be a witness before the Grand Jury when they had a hearing in the case, in this case?

A No, sir, they did not.

Q But you made a complete statement to them of all you knew about the matter, that you remember?

A Yes, I believe that's correct.

Q On the 21st day of July -- now, let me see -- before that you had made a statement to --

A Bay Village.

Q -- to Mr. Mahon and Mr. Parrino?

A And also to the Bay Village police.

Q You had made statements to the Bay Village police. On the 21st day of July, do you remember an editorial being in the front page of the Press calling upon Gerber to have an inquest?

A Yes, sir, I certainly do.

Q And did you get a subpoena that night?

A Yes, sir, we did. 6 p.m.

Q And where were you subpoenaed to appear?

A Normandy School in Bay Village, auditorium .

Q Where is Normandy School?

A It is on a little street called Normandy Road. It is just off Dover Center Road right in the center of Bay Village.

Q Is it a main highway?

A Normandy School, no, sir, that is not on a main highway.

Q That is in what part of the Village?

A It is just about the center of the Village.

Q And was your wife also subpoenaed?

A Yes, sir, she was.

Q When you arrived there that morning, what kind of a scene presented itself to you?

A Well, it was very -- rather frightening. There were a great crowd of people, numerous photographers, reporters, and it seemed like a big circus to me.

Q Now, then, did you testify?

A Yes, sir, I did.

Q Before you testified, did anything happen?

A To me?

Q Yes.

A No, sir.

Q Were you searched?

A I wasn't, but I saw Dr. Steve and Dr. Sam.

Q They were searched?

A Yes, sir. I don't recall that they did that to me.

MR. MAHON: Wait a minute.

What was the last?

THE WITNESS: I don't recall

that they did that to me.

Q When you got into this room, what kind of room was it?

A Well, it was the auditorium. I believe it was a combination auditorium and gymnasium.

Q And how many people were in there?

A Oh, I'd have to estimate. There were a couple of hundred, probably.

Q And what was the situation as to being photographed, and --

A Well, as you entered the room you were blinded by the flashlights and TV cameras, and so forth. There was a press table, similar to this, only more of it.

Q A press table like we have in this room here?

A Yes, only there was more of it. It was a larger room, and there were photographers, and reporters and TV people.

Q And then who questioned you?

A Dr. Gerber questioned me.

Q And Mr. Danaceau was there with him, was he not?

A That is correct.

Q Your father and mother also were brought down before that crowd, weren't they?

A That's correct, sir.

Q Were you present when Sam was arrested on the 30th of July?

A Yes, sir, I was.

Q Where was Sam at that time?

A He was in my father's home.

Q Had he been out of the Bay View City from the time -- from the 4th of July up to the date he was arrested?

A The only time he was out of Bay Village was when he would be over at my brother's home in Rocky River, or when he would be called downtown to the County Court Building, I believe it was here, for interrogation.

Q Well, he was around, and he had been down to take up his work again, had he not?

A He had seen a few patients in the hospital.

Q Now, what time did the police arrive at your father's house?

A Well, it must have been around 10 o'clock in the evening.

Q Who arrived there?

A Lieutenant Mercer, I believe was there, and Officer Drenkhan.

Q And they took him into custody?

A Yes, sir.

Q At that time did you know whether or not he had called, when

those officers were there, for Mr. Petersilge?

A Yes, sir. When they came in and said that they would have to take him along with them, he asked if he could call his counsel, and he, himself, I don't believe did the calling. I believe it was my wife.

Q Did you accompany him to the City Hall?

A I asked him if he wanted me to go along with him. He said no, that wasn't necessary.

Q So he went along?

A That's right.

Q They put manacles on him?

A Yes, sir, they handcuffed him.

Q What?

A They handcuffed him.

Q And he departed, then, for the --

A Well, there was a brief waiting period. The reporters and photographers were covering the lawn and out on the highway, and screaming and carrying on, and stopping cars and trying to find out who was in cars, and so forth, and had been all evening.

Q Were there any shouts at that time?

A Oh, there was a lot of shouting.

Q What was the shouting?

A "Look in his car. Is Sam in this car?"

when
And/I drove in earlier, they tried to see who was in

my car, and it was quite a rumpus, and my father insisted that the property be cleared before Sam was taken out of the house, and the Bay Village officers waited briefly and called another officer who finally came in a cruiser, and between them they finally were able to clear the front yard enough so that they could get out.

Q Well, the reporters were all around there and photographers?

A Oh, yes, sir. There were many, many of them.

Q You say there were shouts?

A Yes, sir.

Q And what was some of the things that were being shouted at that time?

MR. PARRINO: I object.

THE COURT: Objection will be sustained.

Q Well, Sam was there?

A Sam was in my father's home, that's right.

Q Were there shouts of "Murderer" at that time?

MR. MAHON: Object to this, if your Honor please.

THE COURT: Objection sustained.

MR. CORRIGAN: Why?

MR. DANACEAU: It is highly improper, Mr. Corrigan. You know it as well as anybody else.

MR. CORRIGAN: What?

MR. DANACEAU: You know it is highly improper.

MR. CORRIGAN: It isn't highly improper.

MR. PARRINO: Let the Judge decide.

MR. CORRIGAN: I am showing the picture surrounding the arrest of this man.

THE COURT: I know, Mr. Corrigan, but --

MR. CORRIGAN: Don't tell me it is highly improper.

MR. DANACEAU: It is highly improper.

MR. PARRINO: I think Judge Blythin is conducting these proceedings. Let him decide.

MR. CORRIGAN: All right. I accept the ruling of the Court, but don't you people tell me what is highly improper.

MR. PARRINO: We are objecting to the Court, and the Court is sustaining the objection.

MR. CORRIGAN: Well, the Court has sustained the objection, and I am accepting --

THE COURT: If you gentlemen are through, I would just like to say a word to close this matter, I hope. The Court is not interested at all in hearing anything whatever about the arrest

of anybody, because when the police are issued warrants, they arrest people, no matter who they are, nor what the offense. It has no bearing whatever on the guilt or innocence of any defendant here.

MR. CORRIGAN: I accept the ruling of the Court, but I don't accept the ruling of these gentlemen that it is highly improper. I accept your ruling.

Don't let them be telling me what is highly improper.

THE COURT: We will never solve that problem here, as to that.

Will you disregard all of this, ladies and gentlemen of the jury, please?

Q Now, then, Doctor, on the 8th of August was there an incident that occurred at your home?

A It was not the 8th of August, Mr. Corrigan, I don't believe.

Q It was the 7th of August?

A On the 7th and the late afternoon of the 6th. There were really two incidents that occurred that --

Q Now, on the 6th of August --

A That was Friday.

Q That would be Friday, what occurred that attracted your attention at your home?

A Well, I noticed --

MR. MAHON: Objection.

THE COURT: Well, I don't know
what it is directed to at all. Let's find out
just what it is.

A On the late afternoon of Friday, the 6th, I heard some
noises -- my home is rather isolated, there is a stream,
a vacant area between the hospital and my house on the
east side of my house, and then there is a very large
vacant area to the west, and then there is nothing across
the street, and to the west of my house I heard some noises
down in the woods, and I went over to investigate, and I
saw four men just off the side of the hill. They were
building something in a tree.

Q What?

A They were building something in a tree, and I overheard
one of them say something about tree house. I couldn't
imagine --

MR. MAHON: If your Honor please,
I want to object to this. It certainly is not
proper.

THE COURT: Yes, I know. We now
know the direction of what it is all about. You
will disregard all of this, ladies and gentlemen,
please.

Q On the 9th of August, that would be --

A The 7th, Saturday.

Q Saturday. Where had you been on Friday night, do you recall?

A Yes, sir. On Friday night we had been over to my father's home -- that was his birthday, and we had gone over to my father's home, my wife and myself -- and did you want me to go ahead with the next morning?

Q Yes. What happened the next morning?

MR. MAHON: I am objecting to this, if your Honor please.

THE COURT: That would be August the 10th? Is this along the same lines?

THE WITNESS: This has nothing to do with this tree house at all.

THE COURT: What?

THE WITNESS: This has nothing to do with these men in the tree house.

MR. MAHON: Well, has it anything to do with the death of Marilyn Sheppard?

THE COURT: I don't know whether it would have anything to do with the case or not, because I have no idea what it is.

Will you just tell what it is about, Doctor?

THE WITNESS: Yes, sir.

THE COURT: Not in detail.

THE WITNESS:

No.

The morning of the 7th, Saturday morning, my wife found a blood trail down my back steps leading to my car --

THE COURT:

We are not interested in that. Objection will be sustained.

MR. CORRIGAN:

I except to that. I think it is important. I will put it in the record.

Well, it will take me a few minutes to put this into the record because I am going to put it by question and answer, and then I think when I complete that, your Honor, that I will release the witness for cross-examination.

THE COURT:

I suppose there is no point in keeping the jury here.

MR. CORRIGAN:

Yes, the jury can have its recess now, I would suggest.

THE COURT:

Ladies and gentlemen of the jury, we will have a few minutes' recess at this point, and as soon as we are ready for you, we will call you.

Please do not discuss this case.

(Thereupon the jury retired from the courtroom, after which the following proceedings were had in the

absence of the Court and jury):

Q On the 7th of August, will you state, Doctor, whether there was anything out of the ordinary discovered in the vicinity of your home?

A Yes, sir, there was.

Q What was there?

A That morning my wife called me back from the hospital and told me there was a blood trail leading from my back steps in through the door of my garage, down the steps in the garage, and up to a point just outside of where my car door would be.

Q And when you discovered this blood trail, did you inform the police?

A Yes, sir, I did.

Q And did the police come then to your house to make an examination of the blood trail?

A Yes, sir, they did. The Bay Village police came, took pictures, measured it, and asked me about it, and my wife.

Q Who were the police that came?

A I believe it was Sergeant Hubach, and I believe Lieutenant Mercer.

Q Did you at the same time call someone to examine that blood?

A Yes, sir, we did.

Q Who was that?

A Dr. Harry Schneiderman, of the Clinical Pathological Laboratory in the Hanna Building.

Q Did he take a sample of blood away?

A Yes, sir, he did.

Q The next day did anybody from the Cleveland Police Department come there?

A Yes. My wife tells me that there were two police officers from the Cleveland Police Department.

Q You don't know of it personally?

A No, I don't.

MR. CORRIGAN: We make an offer.

These questions are dictated in the record out of the presence of the jury, and we make this offer of proof.

(Thereupon following recess, at 11 o'clock proceedings were resumed in the presence of the jury and the Court, as follows):

MR. CORRIGAN: Take the witness.

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CROSS-EXAMINATION OF DR. RICHARD N. SHEPPARD

By Mr. Mahon:

Q Doctor, you have been looking at some notes there?

A Yes, sir.

Q May I see them, please?

A Yes, sir. I'll get them in order here.

(Witness hands notes to Mr. Mahon.)

Q Doctor, when did you make these notes?

A My wife and I made those up last Thursday evening, just to help us as far as our memory of dates were concerned. She has a calendar that she keeps social events and various other things on, and it was taken from that and our memory.

Q Will you keep your voice up so all these folks can hear you?

THE COURT:

Speak a little

louder, please.

A I say, we took those notes last Thursday evening. My wife and myself sat down and tried to get a sequence of events so that I could keep in mind some definite dates that might possibly be asked me, and they were taken from a social calendar that my wife keeps and our memory.

Q These notes were not made on the dates that are set forth

in these notes, were they?

A No, sir, they were not, other than some of the dates were marked on the calendar which was then transferred to those.

Q And you talked over this matter with your wife?

A Yes, sir.

Q And she suggested certain dates, did she?

A Between us we tried to recall certain dates that certain things took place.

Q These dates or these notes are not of your personal knowledge at all, all of them, at least, are they?

A They are of my personal knowledge in that I recalled them when we discussed them together. There may be two or three things in there that had nothing to do with me, as I recall.

Q Now, you have one note here on July 9th. You have testified --

THE COURT: That would be
Friday.

THE WITNESS: Yes.

Q You have testified here that it was on Friday, July 9th, that you came down to my office and made a statement.

A That was to the best of my recollection, sir.

Q Well, are these other notes to the best of your recollection?

A They are to the best of our recollection.

Q Is it "our" recollection or "your" recollection that you

are testifying?

A Our, combined, my wife and myself.

Q Well, we want your recollection, sir, not your wife's.

A It was mine, also.

Q Now, what else occurred on the 9th day of July?

A On Friday Dr. Sam made a tour of the house and, to our recollection, I have here that we had our fingerprints taken. However, I believe that probably was on the afternoon of the 8th that that took place, because I believe Detective Rossbach was on the trip to Dr. Sam's home and he was, I know, present when our palm printing was done. It must have been the afternoon before that that was done. Therefore, this note is not correct.

Q That's not correct. And, as a matter of fact, weren't you in my office on the 14th of July and not on the 9th of July?

A I'm not sure of that, Mr. Mahon. I know I was down there. Things were certainly very confusing. I thought that it was on the 9th.

Q You thought it was?

A I know I was down there, though, and --

Q You are guessing about the 9th, aren't you?

A Yes, sir., that's right. That was the best of our recollection.

Q Do you know when the officers questioned Sam at the

hospital?

A The first day?

Q No. The latter part of the week?

A I know that they questioned him on Thursday.

Q On Thursday. And it was the following day, the 9th, that he went out to the house, is that right?

A That's as I recall it.

Q And were you there when the officers started to question him?

A I believe I was in surgery that morning. I don't recall being present at the time that he was being interrogated.

Q Well, were you present before he was being interrogated, when Dr. Gerber was there, Deputy Sheriff Rossbach and Yettra, Schottke and Gareau, Cleveland police officers --

A I recall being --

Q -- Mr. Corrigan and Mr. Petersilge?

A I recall being outside of the room. I may have stepped in briefly and out again at that time. I remember those people being there in the morning, yes, sir.

Q And did you hear the talk that was going on there at that time?

A Yes. I got a general idea of what was going on.

Q And there was quite a lot of talk and quite a lot of difficulty in getting to talk to Sam, wasn't there?

A There was certainly a lot of confusion at that particular

time.

Q Well, what confusion was there? Now, you tell us.

A Well, Dr. Gerber was going into the room -- I was not in the room myself, so I can't tell you exactly what occurred in there.

MR. CORRIGAN: Well, don't tell anything that you didn't know -- that you don't know, not something you heard.

A Well, I saw these people going into the room. I heard on the outside something about a subpoena, and then that matter was dropped, and the next thing I knew Mr. Corrigan and Mr. Petersilge left the room, and I assumed that the interrogation of Dr. Sam proceeded at that time.

Q Did you know that the Coroner had to issue two subpoenas and threaten to serve them until he could talk to -- or someone could talk to Sam?

A No, sir, I didn't know that.

Q You didn't know that?

A No, sir.

Q You have been very close to Sam during his lifetime, haven't you?

A Yes, sir, I have been very close, although we are eight years apart in age.

Q And you watched his progress as he grew older?

A Yes, sir.

Q When he went to high school and to college and finally became a doctor, you watched that progress pretty close, didn't you?

A Well, of course, while he was in high school I was in college. I wasn't at home with him during this period because our ages are different.

Q I see.

A When he was in medical school, I was already back here but, of course, I have been interested in his training.

Q You knew that he was rather athletically inclined, don't you?

A Yes, sir.

Q And what branch of athletics did he have at high school?

A Well, he was voted, I believe, the best all-around athlete of his class. I believe he was active in football and in track primarily, in high school, as I remember.

Q And then after he left high school, he continued his athletic endeavors?

A Well, he did for one year in college. He was on the college football team, I know, the first year.

Q What college was that?

A Hanover College.

Q And then when he went to Los Angeles to college there, did he still engage in athletics?

A While he was in Los Angeles, the only athletics that I

know of that he indulged in was some swimming, and at that time he was quite interested in tennis. I have heard him speak of playing tennis, he and Marilyn together, on many occasions.

Q And after he returned here to practice his profession, he continued to be actively engaged in athletics?

A After he returned here, I have known of no athletics that Dr. Sam was -- really had time to do other than the swimming and water skiing, which he was most interested in.

Q And that is quite strenuous, is it not?

A It is a very active sport.

Q And did you know that he also played basketball?

A He didn't, as far as I know, play basketball to any extent throughout his athletic career. He did shoot baskets in front of his or in his driveway with some of the high school boys. I don't believe Dr. Sam was particularly interested or active in basketball. I may be wrong in that.

Q And was he also a bowler?

A No, sir.

Q He is not a bowler?

A I have never known him to bowl.

Q Do you know of any other athletics that he performed?

A Well, I know that he discontinued his tennis to a great extent. I don't know really of any other athletics that he was active in.

Q Well, he had a punching bag down in his basement, didn't he?

A Oh, yes. He did like to keep himself in condition and use the punching bag periodically. He didn't do it every night or anything of that kind.

Q And wasn't he also engaged in weight lifting?

A I have never seen Dr. Sam do any weight lifting. I know he had some bell bars that he used occasionally, but I personally have never seen him use them.

Q He had bell bars, though, didn't he?

A Yes, or a weight lifting bar.

Q Weight lifting bars. He kept himself in pretty good condition, physical condition?

A I would say so.

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Q You have testified here that Sam and Marilyn seemed to be very happy?

A Yes, sir.

Q Did you ever know of any rift between them at all?

A Certainly nothing of any major character, Mr. Mahon.

Q Did you know anything of a minor character?

A Yes. There were --

MR. CORRIGAN: Wait a minute.

"Minor character." I object. I say, I object to things of a minor character.

THE COURT: No. He may testify to what they were. If they are minor, they are still minor.

THE WITNESS: Do you want me to answer?

THE COURT: Yes.

MR. MAHON: Yes.

A I know that on several occasions, particularly at the time of various holidays, that is, Thanksgiving, Christmas, there was usually a little misunderstanding -- or not misunderstanding -- argument, about whose family they would have the Christmas dinner with. They generally would compromise and go to both.

Marilyn's family lived on the East side of town, and, of course, they had a close family group over there, so

that she, as a child, had been used to having her Christmases, and so forth, with, and our family on the West Side was very much the same, and there was some disagreement there, but generally it was resolved by most often by their eating or being with us part of the day and then going to the West Side part of the day -- I mean the East Side part of the day.

Dr. Sam, the last few years particularly, was rather loathe to leave the West Side, because on holidays there were usually so many emergencies that came into the hospital, and he was in charge of that work.

I know of another occasion where Dr. Sam was not very happy. He had made a trip to Boston for some special work, and while he was gone Marilyn had had a new sink unit and disposal unit installed in the house without his knowledge, and after he got back, there was no big argument, but I know that he felt that that wasn't quite the thing -- the way it should be done.

I know that -- I never heard of any particular disagreement about this, but I know that Marilyn returned to Cleveland in 1950 during the summer, she was back about two months, and during that period of time Dr. Sam had written to her saying that he had taken a date to a school dance. I think she discussed that or mentioned it to my wife, but I can't think of any disturbance. I know that Marilyn had difficulty in adjusting to the life of a doctor's

wife. She was very much in love with Sam. Sam was, to my knowledge, very much in love with her, but Marilyn had difficulty particularly when Dr. Sam got into his clinical work, that is, as an intern and a resident where his hours were irregular, and he had to spend nights at the hospital, and Marilyn didn't like that very well. She wanted Sam to spend all of his free time with her.

I know Dr. Sam was very conscientious in his medical work. I do know that in California, even on his nights off, if there was a particular surgery that would come up, Dr. Sam would return to the hospital and try to help as much as possible and learn as much as he could, and I don't think Marilyn quite understood that situation, that so often in a doctor's life the profession has to come first, and I think she was a bit jealous of Sam's profession.

Q Was there ever any talk of separation, Doctor?

A Pardon?

Q Was there ever any discussion about separation?

MR. CORRIGAN: Object unless he
was there and heard Sam and Marilyn discuss
separation.

THE COURT: Well, if he knows --

A No, sir, that was never discussed with me, Mr. Mahon.

Q Well, you know, do you not, Doctor, that your wife sent a
letter to Marilyn?

MR. CORRIGAN: Object.

THE COURT: Well, he may say whether he knows.

MR. CORRIGAN: Well, if he knows, all right.

A Yes. She mentioned to me, in fact, that she had read the letter to me. However, when she told me that, I told her that I had no recollection of her --

MR. CORRIGAN: Object to what you told her, and --

A -- reading it to me.

THE COURT: You have answered the question, Doctor.

Q Well, the subject matter of the letter was separation of Sam and Marilyn, wasn't it?

MR. GARMONE: Object unless he knew the contents of it and read it before it was sent.

THE COURT: Do you know what the contents of the letter was?

THE WITNESS: No, sir. I don't recall the contents of the letter at all.

Q You discussed the letter with your wife?

A My wife told me that she had read the letter to me --

MR. CORRIGAN: Object to that.

A -- and I have no recollection of that incident --

MR. CORRIGAN: Wait a minute,
Doctor. When I object you just keep quiet.

I object to what his wife told him.

THE COURT: I don't think we
ought to go into that with him. He says he
does not know what the letter stated.

Q Doctor, coming down to the morning of the 4th of July, you
received a telephone call at about 6 o'clock in the morning?

A Yes, sir.

Q That was from Mayor Houk?

A Yes, sir, that was.

Q And you hurriedly dressed and went to Sam's home, arriving
there about 10 or 12 minutes later?

A That's right, sir.

Q And when you arrived there who did you see?

A As I entered the house, I saw Mayor and Mrs. Houk, Dr.
Sam in the study, as I have described, and there were two
or three other people beyond Mayor Houk and his wife in
the living room of the house.

Q Did you enter from the Lake Road side?

A Yes, sir.

Q Did you see any police officers there?

A Yes, sir. There were police officers, and I didn't know

that these men were firemen, but they, at first glance, looked like police officers. I didn't know them personally. I assumed they were all police officers.

Q And when you arrived there, there was an ambulance in the yard, was there not?

A There was an ambulance in the driveway, as I recall.

Q Yes. And there was a police car there?

A One or two police cars.

Q And you saw police officers in uniform?

A Yes, sir.

Q You know Mr. Drenkhan, don't you?

A Yes, sir.

Q Did you see him there that morning?

A Yes, I did.

Q And when you first went in you observed this medical bag on the floor upended?

A That's right, sir.

Q And you noticed that some of the contents were strewn about on the floor?

A Yes. It looked like quite a lot. There were a lot of vials and bottles and contents spread out on the floor.

Q And there was still some contents in the grip, also?

A There was still some lying inside of it. It looked like it had been tipped out --

Q It hadn't been entirely emptied out, had it?

A It didn't appear that that was the case, no.

Q It appeared as though it had just opened and upended, and whatever rolled out was right there on the floor, is that right?

A Well, I couldn't be specific as to that. It could have beendropped from a height or with force. It was -- I think the material was spread out a little bit more than what you would expect if you just simply upended it and opened it.

Q Well, it wasn't spread out over a great area, was it?

A Well, as I recall, you had to step over some of it as you came in.

Q Then you went into the den, I believe you testified, is that right?

A I didn't go into the den at first. I glanced into the den. This all took place in a period of just a few seconds. I saw Mayor Houk and the bag, and glanced in the den, and saw Dr. Sam sitting there, and asked where Marilyn was, all in practically the same breath.

Q And then you immediately started for the upstairs?

A That's right.

Q And what route did you take to get up there?

A Through the kitchen.

Q And as you got up on the platform you asked someone to get some knives for you?

A That's right.

Q Doctor, I want to show you what is marked here State's Exhibit No. 11, and ask you if you recognize that photograph, the scene of that photograph?

A Yes, sir, I recognize it.

Q And does that photograph represent that bag and its contents as you first saw them there?

A I don't believe it does, sir.

Q You don't believe it does?

A No, sir. It doesn't look the way I remember it.

Q And what is the difference?

A The vials, and so forth, are coming over toward this corner -- it seems that the bag was turned a little bit more with this open side facing more directly south, and these vials and bottles spread out on the floor a little more here. The vials and bottles were very, very noticeable. I don't remember the stethoscope and the other case here so noticeably. The vials were the things I noticed mostly, and they were out quite apparent.

Q And in this photograph it shows that some of the contents are still in that grip, is that right?

A Yes, it does.

Q Did that appear that way to you that morning?

A Yes, there were still some contents in the grip.

Q Well, now, when you asked for these knives, Doctor, there was an officer there in the kitchen, wasn't there?

A He was following right behind me as I was going through the kitchen.

Q That was Officer Drenkhan, wasn't it?

A Yes, it was. I didn't know Officer Drenkhan well enough before this time to call him by name, but I --

Q You now know that it was Officer Drenkhan?

A I now know that it was Officer Drenkhan, yes.

Q And he obtained the knives for you, did he not?

A Yes. He reached up and pulled them off the rack.

Q And then you went upstairs?

A That's right.

Q And Officer Drenkhan went out -- followed you up, did he not?

A Yes, he did.

Q And when you got upstairs and over to the room, just what did you see, Doctor?

A As I stepped into the room I saw Marilyn lying in her bed face up. She was about a third of the way down in the bed. Her head was off of the pillow. Her feet were protruding off the foot of the bed, oh, about a foot. They were straight out. A sheet covered the lower portion of her body. Her right arm was hanging off the side of the bed. It was out in the space there off the side of the bed. I could see that her face was battered. There was a large bloody area behind her head. There were numerous cuts on

her forehead. I noticed them particularly on the left side of her forehead. There seemed to be a series on the left side, three or four in a row. The blood was wet. It was tacky. It was starting to clot.

I raised the sheet -- well, first I took her pulse and there was none. I got my stethoscope from my bag and listened to the chest. Her gown was rolled up rightly in the back. It looked as though she had either been pulled or scooted down in bed, because the gown was rolled up tightly in the back and around under the arms. Her chest -- breasts were completely bare, as was the throat. I placed the stethoscope on her chest and found no evidence of heart tone, although I did notice that there was some body heat present.

I raised the sheet to see if there was any injury on the lower part of her body, saw none. Her left hand was at the side of her body at that time. I saw the bloody condition of the room, as I have discussed previously.

Q Well, now, Doctor, I want to show you what is marked State's Exhibit 20, and ask you if you recognize the scene on that photograph?

MR. GARMONE: What exhibit was that,
John, please?

MR. MAHON: Pardon me. State's

Exhibit 20 and Defense Exhibit J.

A Well, I recognize the general layout of the room here, but this is certainly not the way I saw her when I first went up in that room.

Q It is not?

A Definitely not.

Q And what is the difference?

A She is pulled down in bed much further than she was. Her feet are bent at the knees and hanging down off the side of the bed. Her blouse is all pulled up around the front of her here. Her left arm is across her abdomen. It's certainly not the way I first saw her.

Q It is not?

A No, sir.

Q Well, now, let me show you State's Exhibit No. 10. Do you recognize that scene?

A The general scene. This is just another view, I think, of this picture I saw previously, but it doesn't look the same as I saw it.

Q It does not look the same?

A It doesn't.

Q And you say that her head was pulled down further?

A I don't know about the head. Mainly, the thing that doesn't jibe with me is the fact that these legs are bent clear over to the foot of the bed. As I recall them, they were more straight out.

Q Well, Doctor, if her head was moved, then her feet were moved, isn't that right, and her legs?

MR. CORRIGAN: Object to that.

A They may not have been moved very far, Mr. Mahon. It's just bent at her knees, here. If she was back up another,

probably an inch or two, these legs would be straighter.

Q An inch or two?

A Two or three inches.

Q Again referring to State's Exhibit No. 10, up above her head towards the head of the bed there is not a pool of blood, is there?

A Well, there's a pool of blood considerably above her head here, several inches.

Q well, that would be merely a running off from the wounds there, wasn't it?

A Not necessarily, not necessarily. It could be, certainly.

Q Do you want to say, then, Doctor, that her body had been pulled down from its original position when you saw it?

MR. CORRIGAN: Object. He
didn't say that.

MR. PARRINO: That is what
he is asking him.

MR. MAHON: I am asking him.

THE COURT: He is asking him
that.

A I don't know whether it had been pulled down, Mr. Mahon, but that is not my recollection of how I saw her when I first saw her.

Q And you say that the arm, the left arm, as you saw it, was not across the body?

A Not as I recall it at my first visit, no, sir.

Q Are you sure about that?

A Yes, sir, I'm sure about that. I raised the sheet.

Q Now, referring again to State's Exhibit No. 10, this shows a pillow on the bed there, does it not?

A Yes.

Q That is some distance away from the head of Marilyn, isn't it?

A It appears to be, yes.

Q And is that the way it was when you first saw the body?

A I felt that the pillow was closer to the head than that location.

Q And how much closer?

A That would be very difficult to say.

Q How much distance was there between the head the nearest edge of the pillow to Marilyn's head?

A I would have to estimate. In my first impression when I saw this sight, my first impression was anywhere from three to five inches, and that picture looks like it's farther than that.

Q And there wasn't a trail of blood that led from where Marilyn's head was lying up to the pillow, was there?

A I don't know. I didn't look at that that closely.

Q Well, it doesn't show so in this picture, does it?

A No. There are speckles and spots up there.

Q Just speckles and spots, yes, but there is not a heavy concentration of blood from the head to the pillow, is there?

A No, sir. But this shows a stain, I think, where her arm is lying and there is no arm there, on the far side.

Q You say, Doctor --

A There it is again (indicating).

Q Where was the right arm when you saw it?

A The right arm, when I came into the room the first time, was out off the bed.

Q And will you demonstrate how it was or will you point it out yourself there?

A Well, as nearly as I can. The arm, as I came in the room and saw her the first time, was protruding off the side of the bed. It was out at about this angle. (Indicating).

Q Pretty near at right angles to the body, is that right?

A Pretty nearly so, as nearly as I can recall.

Q And is that the arm that you took the pulse on?

A Yes, it is.

Q Now, you say, Doctor, that State's Exhibit No. 10, that it shows where the arm was on the sheet?

A Well, that's just a guess on my part.

Q Well, let's not guess about this, Doctor. This is serious.

MR. CORRIGAN: Oh, I object

to that and ask it be stricken out and the

jury be instructed to disregard it.

MR. MAHON: You don't want guesses, do you, Mr. Corrigan?

MR. CORRIGAN: I object to that, and ask it be stricken out and the jury disregard it.

THE COURT: All right. Let's go ahead.

Q You say that that mark on that bed is from an arm hanging over there?

A It could be from the position of the arm.

Q Not what it could be, Doctor.

A It's the most likely thing that could have caused that.

Q Well, now, let me show you, Doctor, State's Exhibit 9. Do you see that?

A Yes, sir.

Q Do you recognize that?

A Yes. I recognize the general --

Q And that blood mark is away up by the head, isn't it, shown on that photograph?

A Yes, sir, it is; yes, sir, it is.

Q So it couldn't have been the arm that caused that, could it?

A Apparently not in this picture. Apparently it must not be. That was just an interpretation from those other pictures.

Q That was an interpretation. You are satisfied now that

it was not sticking out that way, aren't you?

A I know the arm was sticking out the side of the bed, but it must not have made that spot that showed on the other picture.

Q It was not out at right angles, either, was it?

A It was when I came in, sir, yes, sir, it was. It was hanging off the side of the bed. It was in the way as I came in.

Q Well, wasn't it hanging out something like that, Doctor?
(Indicating).

A Well, as to the actual number of degrees, that would be very difficult to say, but as nearly as I can recall, it was close to a 90-degree angle from the body.

Q Close to a 90-degree angle?

A Well, that's at right angles. It may have been not quite that. As I came into the room, the arm was hanging off the side of the bed.

Q All right.

A Out into the room.

Q Now, you took her pulse?

A Yes.

Q And you used your stethoscope?

A Yes, sir.

Q On her chest?

A Pardon me?

Q On her chest?

A On her chest, yes, sir.

Q You said that her chest was bare?

A It was.

Q And showing you State's Exhibit No. 9, that shows her chest bare, does it not?

A Yes, partially.

Q And is that the condition that that was in when you first saw it?

A My recollection, Mr. Mahon, is that this pajama top or gown was much higher and much less apparent than this.

Q Well, was there a dressing gown on her when you saw her?

A There was what I thought was a shortie nightie that was rolled up in the back and far up around her shoulders.

Q But you knew that there was a gown of some kind there, didn't you?

A Oh, yes, there was a pajama top or nightie of some kind.

Q That was quite apparent?

A It was not quite apparent. I knew that there was one there; I saw it.

Q Well, Doctor, that gown was over her arms at the shoulders, was it not?

A Yes, it was, that's right.

Q And that was quite apparent, wasn't it?

A That was noticeable, yes.

Q Well, it was very noticeable, wasn't it?

A My recollection was that it was much less noticeable than it is on the picture.

Q Well, Doctor, anyone who looked at that body couldn't have missed the fact that there was a garment covering her shoulders and part of her chest, could they?

A The garment, you couldn't have missed it, no, sir, but my first impression was that that gown was rolled, and tightly so, up to the shoulders. That picture shows the gown quite loose, and as I put my stethoscope on there, my first impression, as I recall it, was that there was not that much gown apparent that the picture shows.

Q Well, now, Doctor, you determined that she was dead at that time?

A Yes, sir, I did.

Q And did you determine how long she had been dead?

A I made a statement, I believe, to you, and I think I made an estimate at the Bay Police Station -- it would be a rather wild guess -- but I believe I said somewhere between 18 minutes up to a half an hour and as much as up to two hours; anywhere from 18 minutes to two hours.

Q It could have been two hours?

A It's conceivable.

Q It could have been 18 minutes?

A The 18 minutes it could have been, although I feel that that's probably unlikely.

Q That's very unlikely, isn't it, Doctor? It was much longer than 18 minutes, wasn't it?

A The reason I estimated the 15 to 18 minutes was that the thing I had in mind as I entered the room was if the death had been anywhere -- if I could estimate between three to five minutes, then I could have an opportunity or a possibility doing cardiac massage, and I knew that her death had been longer than could have made the cardiac massage possible or feasible.

Q You also testified out to Bay Village?

A At the inquest.

Q At the Coroner's inquest, did you not?

A Yes, sir, I did.

Q And what did you testify to out there as to the time of her death, length of time?

A I don't remember exactly, but I believe it was 15 minutes to a half hour or more.

THE COURT:

A little louder,

Doctor.

A 15 minutes to a half hour or more, I believe is what I testified to, in that neighborhood.

Q Didn't you say from an hour to an hour and a half?

A No, sir, I don't believe that I said that.

As I recall the testimony there, someone said that I told Police Chief John Eaton that I may have said that in passing in the yard to --

Q Did you tell that to John Eaton?

A I don't remember making that statement to him. However, if he said that I said that, I am quite sure he is an honest man.

Q Well, didn't you testify at the inquest that it could have been anywhere from 30 minutes to a couple of hours?

A I may have.

Q And you say that now, don't you?

A I say that now.

Q Now, after this -- by the way, did you lift the sheet when you were up there, Doctor?

A The first time that I was up there I lifted the sheet, the first time.

Q And did you observe whether or not she had any gown on below the waist?

A I didn't see any pajamas at all below the waist. I didn't lift the gown that far. I just raised it and got a general idea. I didn't see any gown or any pajama pants on at all. That is mainly the reason that I got the impression that she had on a shortie nightie.

Q And you went over to Chip's room, I believe you testified?

A Stepped up the hallway, yes, sir.

Q And you found that he was all right?

A He was sound asleep.

Q And then you went downstairs?

A That's right.

Q How long had you been up in that room where Marilyn's body was?

A Probably not more than a minute or two.

Q And when you went downstairs, did you go into the den there where Sam was?

A Yes, sir, I did.

Q And what happened in there?

A Well, I don't recollect or recall my exact words, but I spoke to Sam. He was still sitting in the chair with his hands clasped behind his neck. I asked him where his injury was, where he was hurt the most. He indicated his neck.

I told him Marilyn was gone, there was nothing I could do, and with that he slid off the chair onto his face, still holding his neck and said, "Oh, God, no."

Q Doctor, did you say to him, "Sam, did you do that?"

A No, sir. I'm sure I said nothing of that kind.

Q You are sure you said nothing of that kind?

A I am sure I said nothing of that kind.

Q You said a minute ago that you couldn't recall what you said?

- A I can't recall my exact words, Mr. Mahon, but such a thought as that never crossed my mind.
- Q When Sam slid down to the floor, what happened then?
- A He was moaning, crying. I was certainly in an upset state myself. I stepped out, as I recall, I stepped across the hall into the kitchen. There was some police officers there. I think Mrs. Houk was in the kitchen. Very briefly they told me what had happened, the story that he had been hit upstairs and followed someone down to the beach and was hit down there. And about that time Dr. Steve and his wife arrived in the hallway. I saw them come in and go by.
- Q Where were you at when Steve arrived?
- A As I recall, I was in the kitchen.
- Q What did Steve do when he arrived?
- A I can't tell you exactly. He stopped briefly. I think he went into the den for a moment or two, and then proceeded on through into the living room.
- Q Did you see him going into the den?
- A I saw him stop by the den door. I don't remember, to tell you the truth, whether I saw him go in or not. Things were certainly in a very confused state at that time in my mind and in the house.
- Q Did he speak to you when you came in -- when he came in?
- A No, sir.

Q Did you speak to him?

A No, sir.

Q Did he look into the kitchen to see you?

A I don't believe he did. I don't recall speaking to him or him speaking to me. He just came right in and either glanced into the library or stepped in for a moment or two and then went on.

Q And then what happened after that?

A I intended to go on upstairs with Dr. Stephen. He was going on around through the living room, I assumed that he was, and I was going to go on up the steps with him. About that time either Mrs. Houk or Officer Drenkhan, someone called me and said I had a phone call, to come to the telephone. So I did, I went to the telephone, and I talked to Dr. Brill, one of the interns from the hospital.

Dr. Brill asked me if there was anything we needed up at Dr. Sam's house in the way of medical equipment or any additional help or anything that he could do, and I told him no, that I didn't feel there was anything that he could do to help at all and hung up. And then I went on up the stairs through the kitchen and met or saw Dr. Stephen in Marilyn's room.

Q Well, didn't you and Steve go up there together?

A No, sir, we did not. I know that that is mentioned that way in my -- in the inquest testimony.

MR. PARRINO: I object to the witness answering this way, your Honor. He is not responding to the question.

MR. GARMONE: Put a question to him.

THE COURT: It will clear itself up. All right.

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Q Doctor, you said that you read that in your inquest testimony, is that right?

A Yes, sir.

Q You have been studying that pretty close, have you?

A No, sir, I have not.

Q And in that inquest testimony, you said that you and Steve went up the stairs together, didn't you?

A I did.

Q Is that right? Now you say that is not so?

A That's right.

Q Do you know what you told the police when you made a statement on July the 6th?

MR. CORRIGAN: Let's see the statement if you are going to use it.

MR. MAHON: Will you please let me conduct this examination, please?

MR. CORRIGAN: No, we want to see the statement if you are going to use it.

MR. MAHON: Well, I haven't attempted to use it yet.

MR. CORRIGAN: Well, you have got it in your hand and you are asking questions about it.

THE COURT: He may ask him that question.

MR. MAHON: I may ask him a lot of

questions and not use the statement.

MR. CORRIGAN: We have the right to examine a statement.

MR. MAHON: You certainly have no right at this time at all.

THE COURT: Let him answer the question. The question is whether he knows what he told the police on July the 6th.

Now, that certainly he may answer.

MR. CORRIGAN: Well, we have a right to examine the statement, your Honor.

THE COURT: Oh, he is not using any statement.

MR. MAHON: I am not using the statement up to this moment.

THE COURT: He is only asking --

MR. GARMONE: You can tell Mr. Corrigan that without shouting at him..

MR. CORRIGAN: Yes. They don't have to shout at me.

MR. MAHON: It doesn't seem to impress him very much. I have said it a half-dozen times.

THE COURT: He is only asking him if he remembers what he stated to the police on

July the 6th. He can answer that yes or no.

A I have a general recollection, Mr. Mahon.

Q And what did you tell the police at that time?

A You mean about this business of Dr. Steve and myself going upstairs together?

Q That's right.

A I told them the same thing, but may I explain it?

Q You told them what same thing?

A I very likely said that Dr. Steve and I went up together.

Q Not what you very likely said. What did you say?

A I can't remember specifically from July the 6th.

Q Can you give us the substance of what you said?

A I believe that I said that Dr. Stephen and I went up the stairs together.

Q And is that the fact or not?

A No, it is not.

Q And when did you decide that that was not the fact?

A I had completely, absolutely forgotten that I had received a phone call that morning. I had no recollection whatsoever of that phone call until about two months ago when Dr. Brill talked with me and asked me if I didn't remember him calling me. When he mentioned it to me, I could have sworn that he hadn't talked to me at all that morning. I had no recollection of that phone call. After he told me what

the conversation was, I then remembered that he had called me and when, but I could have absolutely sworn that there had been no phone call whatsoever up to the time Dr. Brill told me about it and told me about the conversation.

Q Well, Doctor, the time that you made a statement to the police in Bay Village, that was on the 6th day of July?

A I believe that's right.

Q Two days after this occurrence, that's right, isn't it?

A That's right.

Q But you did go upstairs, and was Steve upstairs when you got up there on the second occasion you were up there?

A Yes, sir.

Q And where was he at then?

A He was in the room where Marilyn was.

Q And what was done there at that time?

A Dr. Steve was, I believe, taking her pulse or trying to with the hand -- right arm, and I believe he was taking her pulse or trying to, and he stepped to the door -- I was right behind him in the doorway -- he stepped to the door and I mentioned to him, "I will see to it that Chip is taken care of. You see about Sam," or words to that effect.

Q Did you go into the room when Steve was in there?

A At that particular time?

Q Yes.

A I don't recall whether I stepped clear into the room, or

whether I was just in the doorway.

Q There hadn't been^{any}/change in Marilyn's body from the time you were first up there until you were up there that second time, when Steve was there?

A Not that I noticed.

Q And then I believe you have testified that you aroused Chip?

A Yes, sir.

Q Got him up?

A That's right.

Q And you took him home?

A I took him to my home.

Q Took him to your home, rather, is that correct?

A That's right.

Q Mrs. Houk assisted you in getting him dressed?

A That's correct.

Q Did you observe other portions of the house there that morning, Doctor?

A Yes, sir.

Q I am talking about this first occasion when you were there, now.

A The first visit -- certainly not very closely. I could see that things were disturbed in Marilyn's desk in the living room. Her papers were on the floor, and also that the drawers were out of Dr. Sam's desk in the den. There were trophies lying on the floor, and there was also an

Island Lake Camp cup, which is another type of trophy, lying on the floor there.

Q And you saw these drawers in this desk in the dining room or the living room were pulled out?

A Yes. They appeared to be pulled out.

Q Not altogether out. They were still hanging in their place?

A That's right. They had been partially pulled out.

Q But they had been pulled out from closed position, is that right?

A That's right.

Q And there were some papers on the floor?

A That's right, sir.

Q And did you go around to the east end of the living room -- or to the west end?

A No, sir. I don't believe I went around that end of the living room at all at any time that I can remember.

Q When you came downstairs with Chip, did you come through the kitchen?

A Yes, sir, we did.

Q At any time did you go up to the second floor from the living room side?

A I don't remember going through that particular portion of the house at any time.

Q Do you know how Steve went up to the second floor when you were in the kitchen?

A Well, I saw him pass on into the dining room, dining area, and I naturally assumed that he went on around and up that way.

Q Well, did you see him going up the stairs?

A No, sir, I did not see him going up the stairs.

Q And then after you took Chip to your home you went over to the hospital?

A That's right.

Q And you testified that you saw Sam over there about the X-ray room there someplace?

A That's right.

Q Is that right?

A That's right, sir.

MR. MAHON: Does your Honor want to adjourn at this time? It is about 12 o'clock.

THE COURT: You are not going to be able to finish?

MR. MAHON: Oh, no.

THE COURT: Ladies and gentlemen of the jury, we will now adjourn for the noon hour and return at 1:15 this afternoon.

In the meantime, please do not discuss this case.

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(Thereupon at 12 o'clock p.m. an adjournment was taken to 1:15 o'clock p.m., Tuesday, December 7, 1954, at which time the following proceedings were had):

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Tuesday Afternoon Session, December 7, 1954.

(1:15 o'clock p.m.)

Thereupon DR. RICHARD N. SHEPPARD resumed
the stand and testified further as follows:

CROSS-EXAMINATION OF DR. RICHARD N. SHEPPARD (CONT'D)

By Mr. Mahon:

Q Doctor, just before we adjourned I was asking you about
the time that you were at the hospital after you took
Chip to your home, and you said that you saw Sam in
the vicinity of the X-ray room, is that right?

A Yes, sir, that's right.

Q You made no examination of him at that time?

A No, sir, I did not.

Q And sometime after that you and Steve went back to
Sam's house, is that correct?

A That's right, sir.

Q And about what time did you go back there?

A As nearly as I can recall, it was in the neighborhood
of 7:30 in the morning.

Q And who was there at that time?

A There were a number of police officers, Larry Houk and
several other people. I can't tell you everyone who was
there.

Q What time did Dr. Gerber come?

A Dr. Gerber arrived shortly after 8:00. It might have been around 8:10.

Q And that's when he ordered everyone out of the house?

A Yes, sir.

Q Did you go back into the house after that?

A No, sir. I didn't enter the house after he asked us to leave.

Q Well, when you went back there from the hospital about 7:30, you were in the house at that time, were you?

A Yes, sir, I was.

Q And did you make any particular observations at that time?

A Dr. Stephen and I together walked around the various rooms in the house, just to see what the situation was.

Q Were you through the living room?

A I was in the living room, and I saw the condition of the room.

Q And what was the condition of the living room?

A The only thing that I saw out of order there was Marilyn's desk was open. The desk was -- the leaf of the desk seemed to be propped slightly on the back of a chair. The drawers were partially pulled out and there were papers and various things that had apparently been in the desk lying about on the floor. Other than that, I didn't see anything out of order or anything in the room that I recall.

Q Now, at the time that you were upstairs when you first arrived and then later on when you went up there with Steve --

A Is that the first visit?

Q -- or you saw Steve up there --

A Yes, sir.

Q -- did you make any observations in the bedroom there?

A Dr. Steve and I walked around in the bedroom, walked over to the -- that would have been the west side of the bedroom and noted that there were some flecks of blood on the shade or curtain on that side, and also noted that there were some flecks that had apparently hit the shade or curtains on the north windows, and Dr. Steve got down on his hands and looked under the bed and mentioned to me that -- no, that is not at that time. You are talking about the second time that I went up, the first time Dr. Steve went up?

Q The first and second time you went up there.

A I went up twice, because I was up the second time with Dr. Stephen, but that was my first --

Q When you first arrived there, you went up and the police officer was the only one that was with you at that time, is that right?

A That's right.

Q Did you make any observations at that time?

A Other than Marilyn's body, no.

Q And then you later on, after Steve arrived, you were up there when Steve was there?

A That's right.

Q That is the second time you were up?

A That's right. That was --

Q Did you make any observations at that time?

A No, sir, not at that time.

Q Well, did you later go up then?

A Yes, sir. When we returned, after 7:30. I have those visits confused in my mind somewhat.

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Q And that would be the third time that you went up there?

A That's correct, sir.

Q And is that when you made these observations that you are telling us about?

A That's right, sir.

Q And you observed these blood specks on the door?

A Yes, sir.

Q And how high were they?

A The door to the bedroom that opened in on the righthand side as you enter, and the closet door, which was closed, which was next to it, seemed to be fairly well covered with rather large blood spatters, spots. They went up pretty well -- pretty high on the door. It dwindled off as it got higher up. I don't believe that I saw them on the ceiling at all.

Q How far did they go down on the door?

A I couldn't tell you that for certain. They were fairly low.

Q How far is that wall where the doors are from the bed?

A Probably not much more than three feet, three, three and a half feet, I would estimate.

Q And then you saw some specks on the curtain, you say?

A On the curtain and shade on the west and north sides.

Q And how far is that from the bed?

A Well, the west wall, it would be the width of the one twin

bed, and the space between, and then another twin bed, and then there was a radiator. How far that would be -- five, seven feet, perhaps, or thereabouts.

Q And how high was the blood speck from the floor there?

A Those that I noted were on the -- at about eye-level on the shade, the few that I saw there.

Q Did you see any other specks?

A There were some blood specks on the wall behind the bed.

Q That would be the head of the bed?

A That's right, the head of the bed.

Q And how far up were they from the floor?

A Well, they didn't seem to go up much higher than approximately a foot from the ceiling, is the best way I could say it.

In other words, from the corner of the room down approximately a foot, it seemed to be fairly clear on that wall. It seemed to be below that.

Q It would indicate, then, from the position of those blood specks, would it not, that as the blood spread it was quite a high arc, is that right?

MR. CORRIGAN: What is that?

THE COURT: That the blood spread
at a high arc.

A A high arc?

Q Yes.

MR. CORRIGAN: I object to that.

THE COURT: He may answer.

MR. CORRIGAN: That draws a conclusion.

THE COURT: I know, but he may
say what his opinion is, if he has any.

A I don't think necessarily it would mean an arc, Mr. Mahon.
It might have been a straight trajectory from a single
point out.

Q You mean that it might have traveled over to the curtain
in a straight line?

MR. CORRIGAN: Object to that.

It is purely speculative.

THE COURT: He may say what he
means.

MR. MAHON: I am just asking him
what he means.

A I think that is possible.

Q And that it might have traveled in a straight line from its
source, on the wall back of the bed pretty near up to the
ceiling?

MR. CORRIGAN: Object what it might
have done.

THE COURT: He may answer.

A It is difficult for me to theorize on how those blood specks
occurred behind the headboard. It might have occurred that
way, I just don't know.

Q I see. Well, on any of the occasions when you went up there that morning, either your first visit there or your second or third, did you see any evidence of a struggle there, outside of what you saw on that bed where Marilyn was?

A Other than the bed being disarranged, I could see no -- you mean like broken furniture, or something of that kind? No, sir.

Q Or tipped over furniture, or scuffed floors, or anything at all?

A There was carpeting on the floor. I didn't see any evidence of --

Q How long did you remain in the room on that third visit?

A That would be very difficult to say. It couldn't have been more than a couple of minutes, two or three minutes.

Q And then you inspected some of the other rooms up there or all of them?

A Yes, sir. Then Dr. Stephen and I walked around into the other rooms upstairs.

Q Now, did you enter that room again at any time that day, that bedroom?

A I don't believe that I did, sir.

Q Were you there when Marilyn's body was removed from there?

A No, sir.

Q How long did you remain there on your second visit there?

A Dr. Steve and I came back to the house. We were there until Dr. Gerber arrived, and left. If we got there around 7:30, Dr. Gerber probably left around 8:15, just guessing, so it must have been in the neighborhood of 45 minutes.

Q And when Dr. Gerber left, you knew that he was going to the hospital to see Sam, didn't you?

A I heard he was going up to the hospital.

Q And is that why you went to the hospital?

A Yes, sir. Dr. Stephen and I followed. We thought that there might be something that we could do to help and --

Q And what was done at the hospital there?

A Dr. Gerber -- when we got there Dr. Gerber had preceded us, and he went on down the hall to see Dr. Sam. I believe Dr. Stephen was with him. I stayed up in the hallway and talked to my father.

Q Did you go in Sam's room at all that morning?

A Later on that morning.

Q Well, while Dr. Gerber was there?

A I don't believe that I did. I don't recall that I did.

Q How long did Dr. Gerber remain there, by the way?

A That would be again just a guess. You mean in Dr. Sam's room?

Q Or at the hospital there?

A It was a brief time. I wouldn't think he was there more than

more, oh, possibly 10 or 15 minutes.

Q And then did you see Sam after that?

A After that?

Q Yes.

A I believe I stepped in the room.

Q Was he in bed at that time?

A He was in bed.

Q And did you examine him at all at that time?

A No, sir, I did not.

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Q The X-rays had been taken at that time?

A Yes, they had.

Q Did you examine the X-rays?

A I went into the X-ray dark room and took a look at the wet films.

Q And did you arrive at any opinion as to his injury from those films?

A No, sir. I am not a Roentgenologist, and we don't ordinarily diagnose things from wet films. I don't generally give an opinion from the X-ray, although I do like to, on many occasions, look at the X-rays. But I didn't diagnose anything from the X-rays at that time .

Q I see. Did you see the X-rays after that?

A I have seen them, but that was quite a bit later.

Q How much later?

A Pardon?

Q How much later?

A Oh, I believe it was after Sam left the hospital. I couldn't tell you exactly.

Q Did you give Sam an examination at any time while he was in the hospital?

A No, sir, I did not.

Q Was it Wednesday that the funeral was?

A Yes, sir, I believe it was.

Q Sam attended that funeral?

A Yes, he did.

Q And when did Sam leave the hospital?

A To attend the funeral?

Q No. When was he discharged from the hospital?

A I believe it was Thursday afternoon late, but I wasn't there when he was discharged. That's the best of my recollection, however.

Q That was the day after the funeral?

A Yes.

Q And after that, he stayed at your father's home?

A Yes, sir.

Q And on Friday he went to his own home at the time the officers were out there, isn't that right?

A As I understand it, yes, sir..

Q And when did he start to work in the hospital again?

A Well, I can't say that he actually started to work in the hospital as you might generally accept that term.

Q Well, when did he --

A I don't know, sir.

Q When did he come to the hospital and start visiting patients?

A I couldn't give you a date on that. I don't really know.

Q Haven't you any idea?

A It would be the wildest kind of a guess. I don't remember when.

Q Well, did you make any note about that?

A When he went to work?

Q That's right.

A No, sir.

Q You kept a pretty good history of all the other things that occurred?

MR. CORRIGAN: Oh, I object to
that question.

THE COURT: Let him answer.

A I don't think I kept a pretty good history. I just had a general rundown of some of the dates that certain things or events took place.

Q Well, you have about four pages of them there, haven't you?

A Yes, sir.

Q And it covers from June until August, doesn't it?

A There are a few dates after that on there, also.

Q Yes. But you have no notation as to when Sam returned to the hospital to administer to patients?

A No, sir.

Q Well, was it a matter of a week after he was discharged?

A Well, you are asking me a date that I don't know, Mr. Mahon. I know that Dr. Sam, when he was able, was concerned about two or three patients that had been cared for previously, and I think went up to the room to look at them, but I don't know when that date was or what date that was.

Q Well, now, after the 4th of July, did you go to Sam's house again?

A I drove my wife up to Dr. Sam's house.

Q Did you say that was on the 5th?

A I believe that was on the 5th.

Q That would be on a Monday?

A I believe that's correct.

Q And you obtained some clothing there?

A My wife went upstairs to get some clothing for Marilyn.

Q Now, after that, did you go back to the house on any other occasion?

A I don't believe I was back to the house again then until the day that we went up there to get some clothing for Dr. Sam and also -- I guess it was in the evening -- and two of the cars were moved.

Q And is that the day the Jaguar and the jeep were removed?

A That's right.

Q And who took the Jaguar?

A Dr. Steve drove the Jaguar home.

Q And did you use it after that?

A I used it quite some period later, yes, a month or so later.

Q Was there a medical kit carried in the Jaguar?

A At the time that I had it?

Q At any time, if you know.

A Dr. Sam carried his medical kit in the Jaguar whenever he used it.

Q How many medical kits did Sam have?

A Only two, that I know of. There is a small Boston bag in the back of the Jaguar. Is that what you are referring to, sir?

Q Well, did he carry instruments in that?

A I think he had some cast material that he carried in that bag. I --

Q Did you see -- pardon me. Were you going to say something?

A I just know that he had cast material in the back of the Jaguar.

Q I see. Did you see any orthopedic wrenches in the back of the Jaguar?

A No, sir, I did not.

Q Was there a bag that they were carried in, such instruments as that?

A There was a small Boston bag in the back of the Jaguar, when I had it, but I don't know where Dr. Sam carried these wrenches. He may have carried them in that bag, but that is not my type of work and I pretty much stay away from it. I don't know what type of equipment he had there, whether there were wrenches in it or not.

Q I see. You have testified here, Doctor, that at the time of the inquest at Normandy School, that Steve was

searched before he testified, is that correct?

A To the best of my recollection, not searched but they patted his -- at least on one occasion, I believe.

Q He was patted down?

A To the best of my recollection.

THE COURT: You mean he was frisked?

THE WITNESS: Yes, sir.

Q Somebody patted him down in that manner, is that right? (Indicating).

A As I recall.

Q And you also said that Sam was searched?

A Yes, in the same manner.

Q In the same manner. You mean he was patted down?

A That's right.

Q They didn't put --

A They didn't put their hands in his pockets.

Q No one put his hands in his pockets, did they?

A No.

Q And you were not searched or patted down?

A Not that I recollect.

uke 14 Q Well, you know, do you not, that Steve had been carrying
a gun?

MR. GARMONE: Objection. The
best evidence --

THE COURT: I think he may
say that.

A Well, I knew Dr. Stephen had a gun in his home, but I did
not know that he was wearing it or carrying it at any time
on his person.

Q I see. You knew, did you not, that Sam was carrying a gun,
didn't you?

MR. GARMONE: Objection.

THE COURT: He may answer that.

The subject has been brought in.

A Answer?

THE COURT: Yes.

A Yes. Dr. Sam wore a small pistol for two or three days,
I believe.

Q And you did not carry a gun, did you?

A No, sir.

MR. MAHON: That is all.

REDIRECT EXAMINATION OF RICHARD N. SHEPPARD

By Mr. Corrigan:

Q Doctor, there is one date that I forgot to ask you about.

Do you recall November the 11th of this year?

A Yes, sir, I do.

Q That was Armistice Day?

A That's right.

Q Were you at your brother's house on November the 11th?

A Yes, sir, I was.

Q What time did you go there?

A That is pretty hard to say. I think it was in the afternoon, early afternoon.

Q Did anybody accompany you?

A Yes. My wife.

Q Did you gain admission to the house?

A Yes, we did.

Q How did you gain admission to the house on the 11th of November?

A Sergeant Hubach brought the key with him and opened the door for us.

Q And when you went in what did you do?

A We were getting some clothing together. My wife gathered up the dirty clothing, dirty linen, and so forth, that had been in the basement for the past four months, and I

checked the furnace to be sure that the water was high enough in the boiler, and -- did you want me to go on?

Q Well, during the course of that visit did Hubach find anything in that house?

A Yes, sir, he did.

Q Tell me about it -- tell the jury about it.

A We had been in the house a few moments, 10 minutes or so, doing the things I have mentioned. My wife and I came down to the kitchen. I believe she had been in the kitchen for a few moments, and we were -- took the ice cubes out of the ice box to be sure to leave the doors open so the icebox would be all right, and at the time she noted a rather foul odor. She was smelling around trying to find where it came from, and it seemed to be coming from the wastebasket, and Sergeant ^{Hubach} was in the kitchen with us, and suggested that probably some milk containers that the police had had in there previously and thrown in the wastebasket might have been causing an odor and suggested that the wastebasket be taken out and burned, the contents, and as my wife picked up the wastebasket and moved it, Sergeant Hubach looked on the floor and said, "Well, there is a key."

And Dorothy set the wastebasket down and asked Mr. Hubach whether or not she should pick it up and give it to him, or whether or not it is all right to touch it or not, and he said, "Pick it up and hand it to me," and she did.

So Sergeant Hubach took the key and looked at it and immediately went to the Lake Road door and fitted it into the door and worked the lock. He then put it into his pocket, and that's all I know about the key.

Q Was there anything on the key, do you remember?

A Yes. It was a small key chain, a little link chain, and it was connected -- or connected to the key chain there was a small cylinder-like arrangement. I have never seen any quite like it myself.

Q And that was November the 11th?

A That was November the 11th.

MR. CORRIGAN: That is all.

MR. MAHON: That is all.

(Witness excused.)

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness THOMAS DOZIER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you state your name to the jury?

A Dr. Thomas Dozier.

Q And where do you live at the present time, Dr. Dozier?

A Fifth floor, Bay View Hospital.

Q Are you connected with Bay View Hospital at the present time?

A Yes. I am on the fellowship program there, specializing in surgery.

Q And when did you come to Cleveland, or to Cuyahoga County, rather?

A Approximately two years ago.

Q And where did you come from?

A I'm from Texas, a suburb of Dallas, Cedarville, where I was in general practice there for about two and a half years.

Q Where is your home?

A Atlanta, Georgia.

Q And what is your background educationally?

A Well, I graduated from high school in Atlanta, Georgia.

I got my Bachelor's degree from the Atlanta division of the

University of Georgia. I graduated and received my Doctor of Osteopathy degree from Des Moines College of Osteopathy and surgery; had a year's internship at Muskegon Osteopathic Hospital, and a little over two years' training in surgery.

Q And then you practiced medicine in the vicinity of Dallas before coming here?

A In a suburb, Cedarville. It's about 20 miles out.

Q And then you came from that section to further your education here?

A Yes, to work with the Sheppards in surgery.

Q Now, then, calling your attention to the 4th day of July of this year when Marilyn Sheppard was murdered, do you recall that morning?

A I do.

Q Do you recall of ever having been at the Sheppard home prior to the 4th of July?

A I do not believe I was in the house, but I was on the premises. I went about probably a year previous, and went for a boat ride with Dr. Richard Sheppard at the home in the back yard of Dr. Sam Sheppard's house.

Q Would you say that you were associated with Dr. Sam Sheppard and Marilyn Sheppard socially?

A Well, I didn't see them very much socially. I saw Marilyn Sheppard, oh, maybe a dozen times, but I had never been to their home socially except for that one occasion. I had

been invited, but never did get there.

Q Did you say you were^{there} for three years?

A What's that?

Q Did you say you have been at Bay View Hospital for the past three years?

A No, sir. About two years, approximately. January, '53.

Q And did you work with Dr. Sam Sheppard during that two years?

A Yes, I did. I worked with him and his brothers and his father.

Q I am just interested in Dr. Sam at the present time.

A Yes, I worked with him.

Q Did you assist him in surgery?

A Oh, approximately half of his cases.

Q Did you form an opinion about what type of a person he was as to being even-tempered?

A Yes. I think he was very even-tempered. I don't believe I ever saw him lose his temper. He had good surgical judgment, and I enjoyed working with him, and of all the brothers, I think he probably was the most even-tempered.

MR. PARRINO: Object to this.

MR. MAHON: Object to this.

THE COURT: The jury will disregard

that statement. We are talking about Dr. Sam.

Q But that was your observation of him as an even-tempered

individual?

A Yes.

Q Now, there was to be, on the 4th of July, as we have learned in this case, a gathering at the Sheppard home for interns. Were you invited to that, Doctor?

A Yes, I was.

Q And who invited you to that gathering that was to take place on the 4th of July?

A Dr. Sam invited me on the 3rd. Oh, it was sometime in the afternoon, probably around 6.

Q Now, were you in the hospital on Saturday afternoon -- not Saturday afternoon -- but on Saturday, when a little boy was brought in who was very badly injured?

A Yes. It was on the 3rd. I don't remember whether it was Saturday or not. I think it was. There was a fracture of the femur, and I was checking the patient, and we had Dr. Sam come in, and that is when he invited me at that particular time.

Q I couldn't hear that.

A I say at that particular time Dr. Sam invited me to the picnic that was to be held the next day.

Q That was when?

A That was July the 3rd.

Q That was when both of you were working on this little boy's --

A Broken leg.

Q -- broken leg. The femur, you say?

A Yes. That is the upper --

Q That is the large bone from the knee to the thigh?

A Yes, sir.

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Q Now, do you recall on that day an accident that Dr. Sheppard worked on that involved the head of a little boy?

A Well, I don't remember it on the day before, but I think shortly before. It may have been two or three days. I don't remember that.

Q I see. All right. Now, then, on the morning of July 4th did you go to the Sheppard home?

A Yes. I received a call at approximately six o'clock. I was in the hospital and I got dressed as quickly as I could and dashed out in my car.

Q And how did you go -- did you go by yourself or did you accompany somebody on the journey to the Sheppard home?

A Dr. Carver, who was then an intern, went along with me.

Q And when you arrived at that house, will you tell the jury just what you observed about the scene that presented itself to you on your arrival?

A There were several cars parked out in front, and there were a number of people there. I believe that Mrs. Betty Sheppard was there, and Dr. Steve, Dr. Richard, members of the Bay Fire and Police Department were there and a number of other people. Some of them I didn't know.

Q What door did you enter?

A Well, I believe it was a door on the south side.

Q That would be the door towards the road?

A Toward the road. I had my doctor's bag with me and I went

in, and I think there was a den on the right. And Dr. Carver, the intern, went in, and Dr. Steve was there. Dr. Sam was lying on the floor on one side. They were checking him.

Q Where did you go?

A I stood in the doorway and watched, since I thought too many doctors might get in the way. So I just stood there waiting to see if I could be of any service.

Q Did you see anything that -- after you made that observation, did you see Sam, Dr. Sam, taken from the house?

A Yes. Dr. Steve said -- mentioned something about, "You have a concussion," and he, Dr. Steve and Dr. Carver helped Dr. Sam up and then they went on out front. I did not go out.

Q Where did you go?

A Well, I stood there for a few moments wondering just what was going on because I -- when I received the call, I didn't know just what was the score. So I saw Dr. Richard there and I asked him, "What's going on?"

And he said, "She's dead."

I said, "Who is dead?"

He said, "Marilyn."

Then he walked on out. So I questioned one of the Bay Fire or Policemen, I don't know which it was, they weren't all completely dressed in uniform, and I found

that by questioning the police officer that she was upstairs. Since I had been called by the Bay Fire or Police Department, I felt that I should go further and find out what had happened. So I said, "I would like to have one of you policemen go upstairs with me so that I may check the patient."

I felt that possibly maybe being a relative, one of the brothers might have neglected to pick up the pulse rate, and I wanted to be sure she was dead. So we went upstairs, the policeman and --

Q Who went up with you, do you recall, Doctor?

A I believe it was a Bay policeman or fireman. I can't say which, and I don't know his name, but I am pretty sure he will know mine, and he went upstairs with me and we saw a door at the head of the stairs that was closed. I peeked in another room and didn't see anybody there.

I observed a few specks of what appeared to be blood on the door at the head of the stairs. I didn't want to open it. I figured something was wrong, so I asked him if maybe we hadn't better use a handkerchief to open the door, and I stood there and he said, "Well, we better check with somebody."

So he dashed downstairs and asked one of the other policemen if it was all right to go in, and he came back

up within a minute, I would say. At that time I took a handkerchief and opened the door.

We went in, and a light was on. I don't know where the light came from, but I think it was the ceiling light, if I remember correctly. I observed on the bed, which was on my left as I entered the room, that a body was there. It appeared to be Marilyn. I was certain of that.

The forehead had been -- appeared that it had been hit with something, there were a lot of gashes across the forehead, a good deal of blood. I reached out my hand and felt for a pulse on her right hand, which was hanging off the right-hand side of the bed. I could detect no pulse.

Q How was it lying off the right-hand side of the bed, Doctor?

A Well, I can't tell you the exact angle, but I would say approximately 45 degrees, roughly.

Q Could you illustrate?

A I would say it was something like this. (Indicating). Her head was slightly nearer the left side of the bed. Like this was the left side of the bed, I would say it was something like this, and I reached over and felt the pulse.

Q And was the hand beyond the mattress?

A As I remember it, it was, yes.

Q Did you notice at that time where the left hand was?

A I'm not positive. That's been about five months ago, and I was more concerned with whether she was alive than just the position. I remember the right one due to the fact that I felt for her pulse.

Then I took my stethoscope out from my physician's bag and placed it over the heart to see if I could pick up a heart beat. I didn't hear any sound.

I thought we should make a very hurried inspection of the place, so I observed that she was lying there with very little on. Across her pelvis there was a sheet thrown. Her breasts were uncovered. There appeared to be some sort of a little blouse, I don't know whether it was a pajama blouse or other type, but it was pulled quite wide apart and above her breasts. They were exposed.

I did not observe any lesions or damage on any other part of the body that I saw other than the head. I looked under the sheet which covered her pelvis to see if there was any gross evidence of damage and I saw none, and placed the sheet back as nearly as possible. I was very careful not to move the body in any way.

Q Now, then, after you had determined she was dead, where did you go, where was the next place you went?

A Well, I told the gentleman --

Q Never mind what you told, please.

A Well. I went downstairs.

Q And did you depart from the house then?

A Yes.

Q And where did you go?

A I went to Bay View Hospital.

Q And when you arrived at Bay View Hospital, where did you go there?

A I went down to Dr. Sam's room.

Q Did you observe him?

A I made a rather superficial examination. Dr. Steve and Dr. Carver had already been over him pretty carefully, as I had been told, and I took an ophthalmoscope and looked at his eye grounds and asked him where he hurt. He said that his neck was hurting him. I observed a slight puffiness on the right side of his face.

Q Now, during that particular time when you went in there, did Sam show any evidence of pain to you?

A Well, he groaned occasionally and mentioned that his neck was bothering him considerably. So I prepared a little roll of felt to go under his head to help support it.

Q Then was it you that arranged for him to go to the X-ray department?

A Well, Dr. Steve had mentioned that he wanted some X-rays. So we saw that he got up to the X-ray, and I was along. I told the X-ray technician that we should be sure to

get a skull series, cervical series and X-rays of the entire skeletal system.

Q Was he ever a patient of yours, Doctor? Could you classify him as your patient?

A No.

Q He was not?

A No. I was merely trying to help get things rolling.

Q You were really giving him first aid?

A Well, just seeing that Dr. Steve's orders were carried out, really.

Q I see. And then did you notice during some time in that day that a policeman was placed in front of his door?

A Yes, there was.

Q And did you notice about what time that policeman was stationed there?

A I don't remember the exact time, but--

Q Was it on the first day?

A It was on the first day.

Q Did he remain there during the entire time that Dr. Sheppard was in the hospital?

A Yes, he did.

MR. CORRIGAN:

You may cross-examine.

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CROSS-EXAMINATION OF THOMAS DOZIER

By Mr. Danaceau:

Q You say you come from where?

A Well, my home is originally Atlanta, Georgia. I think I have spent most of my life there.

Q And have you been licensed to work in Ohio?

A I am licensed to practice medicine and surgery in the State of Ohio, yes.

Q And when did you receive that license?

A January, 1953.

Q And you have been at Bay View Hospital ever since?

A I have.

Q You have been closely associated with all three Sheppard brothers and their father, Dr. Sheppard?

A I have.

Q You are really studying under them, are you not?

A You might say so.

Q Well, I am asking you, sir.

A Yes.

Q You say you received a call on July 4th, in the morning?

A Yes.

Q From whom did you receive the call?

A Well, I was told that it was from the Bay Fire or Police Department. I was asleep on the fifth floor. One of the

interns answered the telephone, and the intern is the one that told me. It was either Dr. Brill or Dr. Carver. I think it was Dr. Brill.

Q What was the nature of the call?

A They wanted me to go out to Dr. Sam's house and bring an intern with me. We didn't know what was up.

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Q And you then drove out there?

A We did.

Q In what car?

A In my car.

Q What kind of a car is it?

A A 1953 Nash.

Q It is your personal car?

A It is my car, yes.

Q It is not equipped as an ambulance or anything like that, is it?

A No, it isn't.

Q At what time did you get to the Sheppard home, the Sam Sheppard home?

A Well, I assume approximately 15 minutes, which would be roughly around 6:15.

Q Where did you park your car?

A In the front yard on the grass, I believe.

Q Did you notice any other cars there?

A Yes. There were several others there.

Q What type of cars did you notice there?

A I believe Dr. Steve Sheppard's station wagon was there. I observed Dr. Sam's cars were there, and there were several others. I believe the Bay ambulance was there.

Q The Bay ambulance and several Bay police cars, is that right?

A That is correct, yes.

Q Then you, I take it, both went into the house?

A Dr. Carver went in and I went in carrying my physician's bag. He didn't carry one.

Q Now, when you got inside did you see Dr. Steve Sheppard?

A Yes, I did.

Q Did you see Dr. Richard Sheppard?

A Yes, I did.

Q Did you see them both together?

A Well, they were in the same room.

Q What room was that?

A I believe it was in the hallway, to be specific. Dr. Steve was going into the den and Dr. Richard was just standing there.

Q Standing where? At the doorway to the den?

A Well, it was either in the hall or a little further down in the room at the end of the hall.

Q Did you talk to Dr. Steve Richard?

A No, I didn't say a word to him.

Q Did you talk to Dr. Richard Sheppard?

A Not at that time.

Q When did you talk to him?

A After Dr. Steve and Dr. Carver had taken Dr. Sam out of the house.

Q Now, did you talk to anybody at all before then?

A Well, I believe I said hello to one of the police department, and they kind of waved me in or motioned me in. I don't think there were many words spoken.

Q When you came in the house after they waved you in, and you saw Dr. Steve Sheppard there and Dr. Richard Sheppard there, do you mean to tell this jury and the Court that you didn't have any conversation with either one of those doctors at that time?

MR. CORRIGAN: Object to it as
to its form. "Do you mean to tell?"

Q Do I understand you correctly to say that you had no conversation with either Dr. Richard Sheppard or Dr. Steve Sheppard at that time?

A I believe that's correct.

Q You didn't ask them what happened, or what is going on, or anything of that kind?

A Well, I asked one of the policemen, as I said. I said, "What goes" --

Q Well, you said you saw a policeman later on?

A I said they waved me in.

Q Yes. I am asking you when you came in, after they waved you in, do you mean to tell this jury that you had no conversation at all with either Dr. Richard Sheppard or Dr. Steve Sheppard at the moment you got in the house?

MR. CORRIGAN: Objection.

A That is my recollection, yes, sir.

MR. CORRIGAN: Wait a minute.

Object to the question. "Do you mean to tell?"

THE COURT: He says that it is
his recollection.

Q All right. What did you do while Dr. Steve Sheppard and
Dr. Richard Sheppard were in the house?

A I stood there and observed. I felt that too many cooks
could spoil the broth, and I just stood and waited.

Q You just stood there?

A Yes, sir.

Q And you didn't talk to either one until you later talked to
Dr. Richard Sheppard?

A That's correct. I just --

Q Did you see Dr. Steve Sheppard go upstairs?

A I did not.

Q Did you see Dr. Richard Sheppard go upstairs?

A No, I didn't.

Q Did you see Dr. Sam Sheppard there at all?

A Yes, I did.

Q Where did you see him?

A He was in the little room, I believe it is referred to as
a den, on the right, which would be the east side of the
house. He was lying on the floor on the side.

Q Who was in the room at the time you saw him?

A Dr. Carver and Dr. Steve Sheppard.

Q And what were they doing?

A Well, they both knelt down, as I remember, and were attempting to determine what was wrong with Dr. Sam and the extent of his injury.

Q Did they have any conversation with Dr. Sam at that time?

A I really can't answer that question. I was standing a little ways off, and I was just watching, and I heard him say that, "You have had a concussion."

Q You heard whom say that?

A Dr. Steve Sheppard said that.

Q To whom?

A To Dr. Sam.

Q He told Dr. Sam he had a concussion?

A He was asking him some questions, as I recollect, but I can't tell you what was going on --

Q What were the questions that he asked him and what were the answers?

A I couldn't tell you.

Q You can't tell what the questions were or what the answers were?

A I couldn't hear. As I said before, I was a little ways off, and I could not understand what was being said.

Q How far were you standing in the hallway at the door entrance to where Dr. Sam was on the floor?

A I would guess six or eight feet.

Q Well, was Dr. Stephen whispering to Sam?

A Sometimes Dr. Steve speaks in an indistinct tone. I'm from the South, and I don't always understand the lingo.

Q You know a whisper when you hear one, don't you?

A I wouldn't call it a whisper, no.

Q Was it ordinary conversation? Was it an ordinary conversational tone?

A I think so.

Q About six feet from where you were?

A That is true.

Q And you can't tell us what the questions were and what the answers were?

A Frequently standing across from him in surgery at two feet away, I can't hear what he says.

Q Did either Dr. Richard Sheppard or Dr. Carver put any blankets or any warm clothing on the body of Dr. Sam Sheppard in your presence?

A I didn't see ~~them~~. I did not see ~~them~~.

Q Did you see them do anything at all?

A They were examining him.

Q But you did hear him say, Dr. Steve say to Sam, "You have a concussion"?

A "You have had a concussion."

Q Did you observe them when they took Dr. Sam Sheppard out of the house?

A Yes, I did.

Q Did you help them at all?

A I did not.

Q Did Dr. Sam get up from the floor?

A As I recollect, they, one on each side, helped him get to his feet.

Q And then they took him out of the den?

A That's correct.

Q And then toward the door?

A That's correct, out into the hallway, as I remember.

Q And then out the Lake Road door?

A That is my recollection.

Q Did you help at all?

A I stood there and watched.

Q They didn't need your help, did they?

A They didn't say so.

Q Well, you didn't think they did, or you would have helped, wouldn't you?

A Yes, I would.

Q He was naked from the waist up, that is, Dr. Sam, isn't that correct?

A That is my recollection, yes.

Q Was he covered up by anyone, did anyone give him any covering?

A Well, I didn't see them do it while he was in the house.

Q You were in the hallway right there, weren't you?

A That's correct.

Q And you didn't see anybody give him a coat or anything else?

A That's correct.

Q And then they left the house?

A Yes.

Q Did you follow them out?

A Probably two, three feet, maybe.

Q Was he taken to the car?

A I didn't follow him all the way out, as I just said.

Q Did you see him put in the car?

A I think so, but I would hesitate -- I don't remember the details of that.

Q Well, you didn't see him being put in the car, did you?

A I don't remember it.

Q Now, as he was going out of the hallway, he was walking between these two gentlemen, Dr. Steve Sheppard and Dr. Carver, is that correct?

A I didn't observe just too closely how he went out, except that I believe his arms were both around -- one around Dr. Steve, one around Dr. Carver. I believe they also each had an arm around him.

Q Did they have to drag him out or did he walk?

A Well, I don't remember exactly, but I think he was doing some walking, and I think they were helping him. He was conscious, if that is what you want to know.

Q Was he talking?

A I didn't hear him.

Q Was he moaning?

A What's that?

Q Was he moaning?

A He moaned several times, yes.

Q Was he crying?

A I didn't hear him.

Q Did you see him cry other than hearing him?

A I did not.

Q Did you see him cry when he was on the floor in the den or hear when he was on the floor in the den?

A He was groaning. I would hesitate to call it a cry. Complaining of pain.

Q Now, after Dr. Sam left the house with Dr. Steve and Dr. Carver, then you remained in the house?

A That's correct.

Q Where was Dr. Richard while Dr. Sam was being removed from the house?

A I can't answer that question, but as I recollect, he was either in the house further down the hall, which means further north of the hallway, I believe, and he may or may not have

followed them out. I can't remember positively, but I think he did. I think he followed them out to the car.

Q Now, we don't want your guessing, sir. Will you tell us just where he was when Dr. Sam Sheppard was being removed from the house?

A I don't remember.

Q You don't know, then?

A You are correct.

Q How long did you remain in the hallway after Dr. Sam Sheppard left the house?

A A few minutes, and then Dr. Richard walked by, which direction, I can't say.

Q Just a minute. You have answered my question. You said a few minutes, is that correct?

A I said minutes. I don't know. It may have been seconds, it may have been actual minutes.

Q You just stood there for that period of time until you say you saw Dr. Richard Sheppard come down the hallway, is that correct?

A That's correct.

Q Where did he come from?

A That's what I just said. I don't know. He either came from -- he probably went out with Dr. Steve and Dr. Carver.

Q Well, now, did you see him go out?

A I don't remember.

Q Do you know whether he went out with Dr. Steve and Dr. Carver?

A I don't know.

Q Why do you say, then, that he probably went out with Dr. Steve and Dr. Carver and Dr. Sam?

A Well, that's been about five months ago, and certain things don't remain with you if you don't pay especially close attention.

Q Well, you say a thing is probable on the basis of not knowing anything about it?

A Well, if I am not certain, I am certainly not going --

Q Didn't you say that he probably went out with Dr. Steve and Dr. Carver and Dr. Sam?

A I did.

Q On what basis do you make the statement that he probably went out?

A Well, Dr. Sam apparently had been injured, and I would think that the normal thing for a brother to do, who is a physician, is to see if he could help, and that is what I would have done had it been my brother.

Q I don't question that, sir, but you don't know whether he went out or not? You have no knowledge at all on the subject, isn't that correct?

A I say vaguely, I think that I saw him, but I would not say

positively.

Q You think you saw Dr. Richard go out at the same time that Dr. Sam Sheppard went out, is that correct?

A Maybe a few steps before or maybe after. As I told you, I don't remember that particular point.

Q All right. Did you see Chip there that morning?

A I did not know Chip very well.

Q Did you see a little boy there?

A I don't remember seeing him.

Q Didn't you see Dr. Richard leave with a little boy?

A I don't remember seeing it.

Q Didn't you see Dr. Richard --

A I was told --

Q Just a minute. I am not asking you what you were told. I am asking what you, yourself, saw. Did you see Dr. Richard Sheppard, Mrs. Houk and a little boy leave the house together?

A I have never been introduced to Mrs. Houk.

Q Didn't you see Dr. Richard Sheppard and a lady and a little boy leave the house together?

A I was not paying any attention to that particular --

Q Didn't you see Dr. Richard Sheppard, and a lady and a little boy leave the house together?

A I don't remember it. I saw many people there. As I stand on a street corner, I don't pay much attention to them unless I have some reason to do so.

Q Well, unless you know of your own observation, you cannot testify whether a person was there or was not there, isn't that correct?

A I'm positive Dr. Richard was in the house when I arrived.

Q All right. Did Dr. Richard Sheppard or Dr. Steve Sheppard ever instruct you to examine the body of Marilyn Sheppard?

A No, they didn't.

Q All right. Did anyone ever instruct you to examine the body of Marilyn Sheppard?

A I was told by an intern that the switchboard operator had told them that the Bay police or Bay fire department had requested that I come out, and I assumed that they wanted me to examine the patient.

Q You had already seen both Dr. Richard Sheppard and Dr. Steve Sheppard at the premises?

A I had.

Q You knew that Marilyn Sheppard was their sister-in-law, and that Dr. Sam Sheppard was their brother, isn't that correct?

A True.

Q Did you ever report to the police department that you had examined Marilyn Sheppard that morning?

A Yes, orally.

Q Orally? When was that?

A At the time I examined her there was a police officer with me --

I don't know his name -- but I will bet you he knows mine.

Q Did you say he might have been a fireman?

A It's entirely possible.

Q Then why do you now say he was a policeman?

A What's that?

Q And why do you now say he was a policeman?

A I stated I believe, if you heard correctly, that it was either a policeman or a fireman. As I recollect, they did not have on their uniform. They had on pants and, I believe, a T-shirt. It is difficult to determine.

Q You never made any statement in writing to any authorities, Cleveland, Bay Village, or anywhere else, of this examination that you made of Marilyn Sheppard, did you?

A Yes. I was questioned by the Cleveland Police Department.

Q When was that?

A I can't tell you the exact date, but I would say within a week to 10 days, probably about 10 days after the event occurred.

Q And you signed a statement?

A I believe that is correct.

Q And in that statement you state that you examined the body of Marilyn Sheppard?

A That is true.

Q Now, when you went upstairs to examine -- withdraw that.

Did you go upstairs for the purpose of examining

the body?

A I had -- as I stated before, I didn't know what was going on. I was not aware that she was dead. I didn't know who was injured, or what, when I went out there. As I testified a few moments ago, I asked Dr. Richard what has happened, and he said, "She's dead," and I asked him who, and he said Marilyn, and that was the first I knew of it.

Q Dr. Richard told you that Marilyn was dead?

A He did.

Q You know Dr. Richard Sheppard, don't you?

A I do.

Q When he told you that Marilyn was dead, didn't you believe him?

A I believe that frequently a relative may make a mistake. Sometimes a pulse rate can be very weak, and it is quite an emotional strain to examine a relative that has recently died, especially in a violent way. I didn't know that it was a violent way at the time, but I felt that I should examine the patient because he might have missed a pulse rate.

Q You went up there, then, and examined -- you went upstairs and went into the room?

A That is true.

Q When you took one look, was there any doubt in your mind that Marilyn Sheppard was dead?

A Yes.

Q Without examining the pulse?

A Yes.

Q You found it necessary to examine the pulse?

A Yes.

MR. DANACEAU: That is all.

REDIRECT EXAMINATION OF THOMAS DOZIER

By Mr. Corrigan:

Q Were you called by these gentlemen to be a witness before the Grand Jury of this County?

A I don't remember having been called. I was called by Patrolman Nichols to be interviewed by members of the Cleveland Police Department.

Q But you were never called down to this Courthouse before the Grand Jury?

A I didn't even know where it was.

MR. CORRIGAN: That is all.

RECROSS EXAMINATION OF THOMAS DOZIER

By Mr. Danaceau:

Q There is one question I forgot to ask that I would like to ask you. I believe you testified that you were the one that put this felt collar around the neck of Dr. Sam Sheppard?

A No, I did not do it.

Q Did you prepare it?

A I did not. Would you like to know what I did prepare?
Maybe I better tell you that.

Q Maybe I misunderstood.

MR. PARRINO: I didn't understand
the witness. What did you say you did?

THE WITNESS: I said I did not
prepare the felt collar. I stated that I
prepared a felt roll to go under Dr. Sam's neck.
He said his neck hurt. He was going to have
X-rays, and this just went under there to help
support his neck.

Q I see.

A He did have a Schanz collar of a felt type prepared later.
I think Dr. Brill or Dr. Carver prepared it. I can't
answer it.

Q There was a stocking-type of collar put around his neck.
Do you know anything about that, or who prepared it?

A I just stated that a Schanz collar -- that is the type
that you have seen pictures of him in the paper --

Q That is not the one I have reference to. That came later.
But on the morning of July 4th he had a stocking collar
around his neck?

A He had a felt collar around his neck.

Q A felt collar?

A I would call it felt. It probably wasn't made of rabbit, but, it was to support it. It was a thick, felt pad going all the way around. I did not prepare that.

Q Is there a salve or an ointment that is put on the neck when that type of collar is put on?

A I didn't put any on there. Not necessarily.

Q I didn't ask you whether you put it on or not. I say, when such a collar is put on, is there a salve or an ointment that is put on to protect the neck?

A Not necessarily.

Q Do you know whether it was in this particular instance?

A I don't know.

Q Well, weren't you in there to examine Dr. Sam Sheppard that morning?

A I said I made a superficial examination. Dr. Carver and Dr. Steve Sheppard --

Q Well, he had complained of his neck, didn't he?

A Yes.

Q Didn't you examine the neck?

A Only superficially, very superficially.

Q Well, in examining the neck, with the collar, wouldn't you have to lift the collar a bit?

A He had no collar on when I examined him.

Q He had no collar at all?

A No collar at all.

Q What time of the day was it that you examined him, sir?

A Well, somewhere between 6:15 and 7 o'clock, I would judge.

IS
IAC Q Between 6:15 and 7:00 o'clock. Where did you make the examination?

A At Bay View Hospital.

Q What time did you get back to Bay View Hospital?

A That is what I don't know. I just estimate that it must have taken me -- it must have been anywhere from 20 to 30 minutes, I would say, after I arrived at the house, because I didn't stay out there over 10 minutes, I'm sure.

MR. DANACEAU: That is all.

MR. CORRIGAN: That is all.

Thank you, Doctor.

(Witness excused.)

MR. CORRIGAN: May I check and see what witnesses I have here, your Honor?

THE COURT: Surely.

MR. GARMONE: Do you want to have the afternoon recess now while he is checking, Judge?

THE COURT: Oh, it's a little early.

MR. GARMONE: All right.

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Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness ANNA FRANZ, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF ANNA FRANZ

By Mr. Corrigan:

Q Now, will you tell the ladies and gentlemen and the Court your name?

A My name is Mrs. Anna Franz.

Q And where do you live, Mrs. Franz?

A I live at 1363 Bunts Road, Lakewood.

Q And how long have you lived in this community?

A It was two years ago last April when I moved into Lakewood.

Q But how long have you lived around Cuyahoga County?

A Oh, I have been in Cleveland since 1918.

Q And what work do you do?

A I'm a nurse.

Q And how long have you been a nurse?

A Well, I have been nursing for the past 25 years.

Q And at the present time, are you employed in your profession?

A Yes, sir.

Q And where are you employed?

- A I'm working at the Bay View Hospital.
- Q And how long have you been working at the Bay View Hospital?
- A I've been working with Cleveland Osteopathic Hospital since 1940, early '40, and I was transferred to Bay View when they opened.
- Q That was in 1948?
- A In 19 -- I think I was transferred in 1950 or '49 when Cleveland Osteopathic Hospital was closed.
- Q And then you went to --
- A I went to Bay View Hospital, yes, sir.
- Q And you have worked there continuously since that time?
- A Since that time continuously, yes, sir.
- Q Now, Mrs. Franz, were you on duty on the 4th of July?
- A Yes, sir, I was.
- Q What time did you start your tour of duty on that day?
- A Well, I come in at 11:30 at night and I'm on duty until 7:30 the following morning.
- Q Then you started on July 3rd?
- A Yes, sir.
- Q And what time were you supposed to be through on the 4th of July?
- A 7:30.
- Q Before you had completed your work of that day, that tour of duty, did you see Dr. Sam Sheppard brought to the hospital?

A I did, sir.

Q Where were you at the time?

A I was on the floor making my morning work, like we usually do, and I was alerted from the operator that they were bringing Dr. Sam Sheppard to the floor.

Q Was that about the time that you were finishing your work?

A Well, that was the time when we were finishing our -- what we call a.m. cares.

Q Yes. Now, where was Dr. Sam when you first saw him?

A Dr. Sam was on the cart.

Q Where?

A Well, they were bringing him to the room.

Q And when they brought him -- did you see them bring him into the room?

A Yes, sir, I did.

Q And did you go into the room?

A I did, sir.

Q And when you went into the room, did you observe Dr. Sam?

A I did, sir.

Q Will you tell the jury what you saw when you looked at Dr. Sam?

A Dr. Sam's face was swollen and he was shaking.

Q Yes.

A And he had an appearance of pain, expression showed me that he was in pain, with his hands clasped around his neck.

Q How? Show me how.

A Just like this (indicating).

Q Then did you perform any service for him when he was brought into the room?

A Yes, sir. We started to undress him.

Q When you say, "We started to undress him," was there someone else there?

A Yes, sir.

Q Who was that?

A There were doctors there.

Q Some doctors?

A Well, yes. I think, if I can remember correctly, there were three.

Q Do you remember who they were?

A There was Dr. Carver, Dr. Lurch, Dr. Brill and Dr. Stephen Sheppard was in and out of the room.

Q Now, who removed his clothes from him?

A We were all helping, and Doctors were helping me because he was shaking so bad that we -- trying to undress him, and they were helping at the top, and I'm positive that there was someone holding on to his neck when we were trying to get the lower part of his clothing off.

Q Did you notice the condition of his clothing?

A Yes, sir.

Q Will you tell the jury?

A His clothes were soaking wet.

Q Yes. Now, did you notice his shoes and socks?

A Yes, sir. The shoes and the socks were also wet.

Q Did you have anything to do with removing the shoes and the socks?

A Yes, I did. I helped.

Q And when you removed the shoes and the socks, did you have occasion to come in contact with his body and with his feet?

A I did.

Q Will you tell the jury what you observed about that?

A His body and his feet were icy cold, and he was clammy and his feet looked like they were water-soaked, like someone that had something that had been in the water a long time.

Q That is, can you describe that a little further?

A Well, there is only one way to describe them, is that they were just shrivelled up.

Q Shrivelled up?

A That's right.

Q As though they had been in the water a long time?

A Yes, sir.

Q Now, then, after you had taken off his clothes did you attempt to do anything else, or did you do anything else?

A Yes. I tried -- I put a thermometer in his mouth.

Q And what did you get, that is, what was the result?

A The thermometer did not register.

Q The thermometer did not register?

A That's right, sir.

Q As a nurse, did it indicate anything to you, the failure of the thermometer to register?

A Well, from my experience as a nurse, the first thing that we think of is a shock.

Q Now, then, after he was put in bed or after you got his clothes off what was the next thing that you did, that you remember?

A Well, he complained of severe pain and I administered a hundred m.g.s of demerol that was ordered.

Q That was on the direction of the doctor?

A That was on the direction of the doctor, yes, sir.

Q And what else did you do?

A Well, then, when we saw that the thermometer didn't register, we started getting blankets and hot water bottles to try to get him warmed up.

Q And you performed that service?

A We all did. There were quite a few of us there. Everybody was helping.

Q Then did you remain there after -- any length of time after you had performed these services on that day?

A No. I went off duty at 7:30.

Q Going to X-ray, you had nothing to do with that?

A I have nothing to do with them going to X-ray.

MR. CORRIGAN:

Thank you, Mrs. Franz.

Cross-examine.

CROSS-EXAMINATION OF ANNA FRANZ

By Mr. Parrino:

Q Mrs. Franz, what time was it that Sam came in, please?

A Well, it was anywhere between 6:30 and 7:00, that I can remember.

Q And where were you when you first saw him?

A I was on the floor. That's on the west wing.

Q Where was he taken to when he was brought in?

A He was taken to Room 115. That's one that was vacant.

Q And you were called upon to perform certain work that morning as a nurse on Dr. Sam, isn't that correct?

A Yes, just like any other patient comes in, yes.

Q I see. Now, you say that you helped remove some of his clothing?

A That's right, sir.

Q And there were many others that were helping do the same thing?

A Yes. The doctors were helping.

Q Who was helping?

A As far as I can remember, there was Dr. Carver, Dr. Brill,

Dr. Lurch, and they were holding up to his upper part of the body, because he had no clothing on the upper part.

Q And what was Sam's condition at this time? Where was he, lying flat or standing up?

A Oh, no. He was lying flat, but when we were trying to get the lower part of his clothes off, they were trying to hang on to his upper part.

Q I see. In other words, somebody was holding him, hanging on to him from above, and then several others were removing his clothing from below, is that correct?

A That's right, because the clothing were wet and it was hard to remove.

Q And you had some little trouble getting off his clothes, didn't you, as you say?

A Yes.

Q It was hard to remove them, right?

A That's right.

Q And who was it that took his shoes off, if you recall?

A I took one of them, I know.

Q And did you take his socks off also?

A Yes, sir, I did.

Q Both socks or just the one?

A One, but they were both wet. I examined them because I put the socks in his shoes after.

Q I see. And who was working on the other foot?

A I think it was my aide.

Q And who is that, please?

A That's a little colored girl that I have working with me.

Q And what is her name, please?

A Mrs. Jackson.

Q And she was removing the other shoe and the other sock?

A Yes. We were working from --

Q And who removed the trousers?

A They --

Q If you know?

A I think the doctors pulled them down.

Q You think the doctors did?

A Yes. We were all -- I was in the room when it was done, yes.

Q There was several of you, then, that were taking off the trousers, too?

A Yes, sir.

Q Then he had some underclothing on, too?

A Yes, sir. He had shorts on.

Q And those were removed, also?

A Yes, sir.

Q Now, you say that he had -- withdraw that.

Will you describe his appearance again when you first saw him?

A He had appearance of pain.

Q Yes. Now, describe his color, and so forth, the first time you saw him?

A Well, the only thing that I saw, of course, his face was swollen, his mouth was swollen.

Q Yes.

A And, well, there's certain expressions that you just can't describe, I mean, but I know that he was in pain or he appeared to me in pain.

Q I see. Well, my question is this: You say something about him appearing cold, clammy?

A Yes.

Q What part of his body did you observe in that condition?

A Well, his lower part, but then when I gave him his demerol I had hold of his arm and that was cold, too.

Q His arm was cold?

A Yes, sir.

Q Was his face cold?

A Well, I didn't touch his face, no, sir.

Q Well, you looked at his face, didn't you, Mrs. Franz?

A Yes, I looked at his face, yes.

Q Well, was there a cold, clammy sweat or wasn't there?

A I didn't notice the sweat, no, sir.

Q You didn't notice that?

A No, sir.

Q Now, any of the things that -- withdraw that.

You also gave him 100 mg's of demerol there?

A Yes, sir.

Q And is that all that you did there that morning?

A Outside of putting the hot water bottles and the blankets to get his body warmed up, yes, sir.

Q Now, in your own handwriting, Mrs. Franz, did you make a record on the doctor's chart of what you personally did there that morning?

A It should be. I'm pretty sure the demerol is on the chart.

Q Well, did you make the entry on that chart?

A Yes, I did.

Q Would this be your handwriting here?

A Yes, sir, it is.

Q In that red pencil?

A Yes.

Q And what time was it that you made that entry?

A As I say, the time went -- we were working so fast trying to get him warmed up -- now, I know that that was between -- close to seven o'clock, I'm pretty sure.

MR. PARRINO: That is all.

Thank you very much.

MR. GARMONE: That is all.

(Witness excused.)

THE COURT: Ladies and

gentlemen of the jury, we will have few minutes'

recess at this point. Please do not discuss
this case.

(Recess had at 2:50 o'clock, p.m.)

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(After recess, 3:05 o'clock p.m.)

Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness EILEEN HUGE, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you tell the Court and the jury your name?

A Mrs. Eileen Huge.

Q How do you spell that?

A H-u-g-e.

Q Where do you live?

A 133 Forest Boulevard, Avon Lake, Ohio.

Q Where are you employed?

A Bay View Hospital, Bay Village.

Q And how long have you been employed at the Bay View Hospital?

A Since January the 8th, 1954.

Q And have you come directly from the hospital to this courtroom?

A Yes, sir.

Q And does that account for the uniform that you are wearing?

A Yes, sir.

Q How long have you lived in Cleveland or vicinity, Mrs. Huge?

A Well, I was born in Cleveland and raised in Cleveland, but this last time I have been here about six years.

Q Did you go to school in Cleveland?

A Yes, sir.

Q And where did you go to school?

A I went to Ursuline Academy, to Ursuline College, and I trained at Mt. Sinai Hospital.

Q Did you graduate from Ursuline College?

A Yes, sir.

Q Did you get a degree?

A Yes, sir.

Q What degree did you get?

A Bachelor of Arts.

Q And after leaving college then did you take up training for the present work that you do?

A Yes, sir.

Q And where did you take that training?

A Mt. Sinai Hospital.

Q How long did you work at Mt. Sinai Hospital, or how long did you train at Mt. Sinai Hospital?

A One year.

Q And in what particular branch did you train?

A In X-ray technique.

Q After you graduated from your training at Mt. Sinai, where did you go then?

A I went to People's Hospital in Akron, Ohio.

Q How long did you remain there?

A I was there a year.

Q Did you follow your workthere?

A Yes, sir.

Q And where did you go from that place?

A I went to City Hospital in Akron.

Q How long did you work in City Hospital?

A A little over a year, about 14 months.

Q And from there where did you go?

A Then I went to St. Joseph's Hospital in Warren.

Q Where?

A Warren, Ohio.

Q How long did you remain at St. Joseph's in Warren?

A I think it was about two years altogether. I was married while I was there.

Q That is when you got married?

A Yes.

Q To Mr. Huge?

A Yes, sir.

Q Mr. Huge -- I get that name mixed up -- what does Mr. Huge do, by the way?

A He is branch manager for the Cooper Tire & Rubber Company.

Q For the Cooper --

A Cooper Tire & Rubber.

Q And in Cleveland here?

A He is manager of the Cleveland branch.

Q And after you left St. Joseph in Warren, where did you go?

A Well, I had a baby after I left there, and I didn't work any more until I came to Bay View.

Q How old is the baby now?

A 15.

Q What?

A 15 years old.

Q 15 years old. Well, you don't look like you have a baby 15 years old.

THE COURT: Let's not talk about babies any more. Not a baby any more.

MR. CORRIGAN: He is a football player by now.

Q Now, then, did you return after you had the baby to working at your profession?

A I didn't return to any full time work until January of this year.

Q Of this year?

A Yes, sir.

Q Did you work extra at certain places from time to time?

A No.

Q So you returned in January of this year, and where did you take up your work in January of this year?

A At Bay View Hospital in Bay Village.

Q Now, you are an X-ray technician, is that correct?

A Yes, sir.

Q Will you tell the jury what an X-ray technician is, if there are some on the jury that may not understand that term?

A Well, an X-ray technician takes all the films required by the doctor to complete his diagnosis, and also does therapy, which is designated or requested by the doctor.

In other words, we set up the machine, take the films, develop them, and they are diagnosed by a doctor. We do no diagnosing or examining.

Q And you say the therapy designated by the doctor. What do you mean by that?

A Well, X-ray therapy. That is a different branch.

Q What?

A X-ray therapy.

Q And what is that? What do you mean by that? I don't understand the word therapy.

A Well, I mean treatments for cancer or for other ailments, X-ray treatments.

Q You expose the person to the X-ray as determined by the doctor?

A Yes, sir.

Q The X-ray is a deep penetrating ray, is that right?

A It is. There is also a superficial X-ray.

Q Now, when you take an X-ray for diagnosis, will you describe to the jury what that X-ray does, what it is?

A Well, the X-ray takes a film of bony structure or of soft tissue, depending upon the technique you use, and, for instance, if you wanted to take a picture of a gall bladder or a stomach, there are various types of opaque materials which the X-rays will not penetrate, and which the outline of that particular organ. Bones are taken so that we block out the skin and the soft tissue and give just enough penetration to show a picture of the bone and any other surrounding things the doctor wants to see.

Q Now, in taking the X-ray, you put the film on one side of the portion of the body that is to be X-rayed?

A Yes, sir.

Q And then on the other side you have a machine of some kind. What do you call it?

A An X-ray tube.

Q What?

A A tube.

Q And am I correct in saying that that tube sends a ray through the surface of the -- or through the body, if you are taking the X-ray of the head, it penetrates through and the picture is taken over on the film that is on the other side?

A That's right.

Q It is a ray of energy, is that so?

A Yes, sir.

Q An energy ray as distinguished -- well, we have the light ray, you know that, don't you?

A Yes.

Q The spectrum, red, green, yellow, orange -- what is the spectrum, do you remember? The things we see when a light ray is broken up, and then beyond those visible rays we have those different rays, among which are the X-ray, energy rays that penetrate through this surface, right?

A Yes, sir.

Q Now, were you working on the 4th of July?

A I was on emergency call on the 4th of July.

Q Did you receive a call on that morning? I am talking of the 4th of July of 1954. Did you receive a call that morning to come to Bay View Hospital?

A Yes, I did.

Q And where were you when you received that call?

A I was in bed.

Q And where were you living at that particular time?

A On Forest Boulevard in Avon Lake, where I am living now.

Q And how far is that from the hospital?

A About six miles.

Q How did you get to the hospital?

A I drove a car.

Q You rode?

A Drove.

Q What?

THE COURT: She drove her own
car.

Q And what time did you arrive at Bay View?

A At 6:45.

Q And you went where?

A I went into the Emergency entrance and directly to the
X-ray department to open the machines. We keep them locked
at night.

Q You went to the X-ray department, and then what?

THE COURT: Opened the machines.

They keep them locked at night.

Q Did you receive any directions from anyone after you arrived
at the X-ray department?

A Yes. I met one of the interns who was waiting for me at
the switchboard.

Q Do you know who he was?

A Yes. It was Dr. Lerch.

Q How do you spell his name?

A L-e-r-c-h.

Q Is he still at the hospital?

A No, he isn't.

Q Where is he now, do you know?

A I don't know.

Q And when did he leave there?

A Well, his internship was finished sometime in July, and he is probably in practice now.

Q Now, then, you got some directions from Dr. Lerch --

A Well, not exactly directions. I asked Dr. Lerch where Dr. Sam was.

Q Had you been informed that it was Dr. Sam that you were to take the X-rays of?

A Yes, sir.

Q Was that over the telephone?

A Yes, sir.

Q Did you know anything about what had occurred at Dr. Sheppard's home that morning?

A No, sir, not then.

Q Had you been informed, before you went to your X-ray room or X-ray department, as to what had happened to Dr. Sam?

A Yes, in a way I was. I was informed over the telephone that Dr. Sam had been badly hurt, to come in at once, which I did.

Q Was that the extent of the knowledge that you had of Dr. Sam's condition, that he had been hurt badly?

A Until I arrived at the hospital, that was the extent of it.

Q And after you arrived at the hospital was there any

information given you as to what had occurred in Dr. Sam's home that morning?

A Yes, sir.

Q Did you know that his wife had been killed?

A Yes, sir.

Q Did you know his wife's name?

A No, I didn't.

Q You did not. When you were directed to the X-ray department, what was the next thing that occurred in the line of your duty?

A Well, the next thing that occurred was Dr. Sam was brought to the X-ray department on a cart.

Q And who brought him, do you know?

A Dr. Carver and Dr. Brill.

Q And when he was brought there, did you receive some directions?

A Yes.

Q Now, tell the jury what directions you received.

A One of the doctors said I should take a skull and a cervical spine to start with.

Q A what?

A A skull series X-ray, and a cervical spine, and that when something else was ordered, they'd let me know, but I should start on that.

Q When you were to take a cervical spine, will you tell the

jury just what part of the body you were going to take the picture of?

A That is the neck.

Q And what portion of the neck?

A The whole neck.

THE COURT:

Demonstrate it.

A The whole neck. The cervical spine is seven cervical vertebrae constituting the neck.

Q That goes down -- it is the part of the spine on which the -- the top of it is the part on which the head rests and turns?

A That's right.

Q Now, then, did you make an observation of Dr. Sam when he was brought into that room for these X-rays?

A Yes, sir.

Q Will you tell the jury what you observed about him?

A The first thing I observed was that he was lying very quietly on the cart, his eyes were closed, and my first glimpse of him, I was standing where his head was. He was wheeled in feet first, and I thought at first he was unconscious. He was very quiet and his eyes were closed, but then I saw his eyelids flutter and realized that he was conscious or was awake.

Shall I go on?

Q Yes. You tell us what you observed.

A Dr. Carver said, "We are going to move you over onto the table, Dr. Sam," and he and Dr. Lerch lifted his body and I held his head. He was holding his neck himself.

Q How was he holding his neck?

A With his hands clasped behind his neck like this.

Q Did you notice anything else about him on that particular occasion?

A Wait a minute, now. He wasn't holding his neck when he came into the X-ray department. I don't mean that. I mean when we said we were going to move him, he put his hands up and held his neck, and I held his head. The other doctors lifted his body onto the table.

Q Did you notice any shivering or tremors in his body?

A Not just then, but when I started to work with him -- he was covered, and when I started to work with him, I noticed that he was shaking and he was cold, and there were hot water bottles on the cart which we had to move back onto the cart.

Q Now, then, when he was moved over onto the table, did you uncover him then, uncover any part of his body?

A No, I didn't have to, because I was going to take an X-ray of his skull first, and he was shaking quite badly, so that I had to make up my own technique, that is, for a skull X-ray, we take it in one second if the patient is cooperating. In other words, if the patient is able to hold still, we

take it in one second at a certain penetration.

If the patient is not able to, we have to cut our time and increase our penetration, and you have to do that until you can get down to even a twentieth of a second, but I took Dr. Sam's X-rays at a half a second.

Q Now, that was the time that you noticed that he was shivering?

A Yes.

Q And after you took that X-ray, did you proceed to take any other X-ray?

A Well, I took one view of the skull, which is always taken on the back, lying on the back. And when I saw his condition, I was afraid we would not be able to turn him over for the rest of them. So I took what is called an A.P. view of the skull, shooting straight through from anterior to posterior, and the required or the routine view is a P.A., with the patient's forehead down on the table, and I wasn't sure at that time we would be able to get that so I wanted to get as much as I could. And then I took an A.P. view of the cervical spine, which is always taken with the patient lying on his back on a table.

Then we take another X-ray that is called an odontoid process, and that is the first cervical vertebra. The only way you can get an A.P. view of that is with the patient lying on his back and his mouth open, and we use a very small cone and we shoot through the open mouth.

Q Now, all this time he was lying on his back, is that correct?

A Yes, sir.

Q Now, then, when you come to take the X-ray of the cervical

spine, then you say the patient opens his mouth?

A On one view of the cervical spine the patient opens his mouth.

Q You have them open their mouths?

A Yes, as wide as they can.

Q Now, did you give the instruction to Dr. Sam Sheppard as to what he should do while you were taking this cervical picture?

A I asked Dr. Sam if he could open his mouth.

Q Now, what did you notice then? Tell the jury.

A Well, I noticed -- do you want me to describe his face now, everything I noticed?

Q Yes, I want you to describe his face.

A I noticed that his eye, his right eye was more swollen than the left, although it appeared to me that his left eye was also swollen and at the time I thought, well, he had been crying, he was crying, and I noticed that he had a bruise and blood on the right corner of his lip.

And when I asked him to open his mouth, he just barely opened it.

And I said, "Dr. Sam, could you open your mouth a little wider?"

And he tried. Well, I would say he didn't open his mouth more than 25 per cent of what would be normal.

He had blood in his mouth, he had a lot of blood

on his teeth. By that I mean I couldn't clearly see his teeth or tell whether there were any missing. I could see that he had his two front teeth, but other than that, I couldn't tell how many were there. And these two front teeth were coated with blood. I didn't look to see what was causing the bleeding, but when I discovered he couldn't open his mouth any wider, I angled my tube a little bit to try to get this shot as best as I could, because when a patient can't open his mouth, it is almost impossible to get that picture.

Q Well, then, did you take the picture then?

A Yes, sir.

Q And after you took that picture, what was the next thing that you remember occurred in that room?

A I remember that Dr. Sheppard, Sr., came in and asked Dr. Sam how he felt, and he asked me what pictures I was taking, and I told him what had been ordered.

And he looked at Dr. Sam and he said, "Maybe we ought to try to get the mandible, too." That's the jaw, the right jaw.

So he asked him if he had any pain -- or he asked if someone had examined his pelvis or his hips, and I remembered Dr. Sam just shaking his head or indicating that he wasn't injured there was what I gathered.

And he said I should take a pelvis. And he asked

him if he had any other pain, and he pointed to his left upper chest, which would be, I would say, just on the line with the cervical dorsal junction, which is right here, and he pointed there in the front (indicating).

So I believe then Dr. Dozier walked in and told me to take ribs, we better get some ribs on him. so I took that film while he was lying on his back.

And then I also took the pelvis while he was lying on his back, although he indicated that it wasn't necessary, he was only complaining of pain in his neck, and --

Q When these doctors were in there, was Dr. Sam doing any talking to them?

A He was never talking to anyone. He was talking to the room. He looked at me once, but I know he didn't see me.

Q How was he talking? You say he was talking to the room.

A He was mumbling and he was moaning, and some of the things that he mumbled were, he said, "I heard Marilyn screaming and I tried to get to her." He said, "Oh, God, I heard her screaming and I couldn't get to her." And he said "things like this don't happen. This couldn't have happened."

Q And those were --

A And then --

Q Those expressions were coming not as a result of any questioning?

A No. Nobody was in the room at all when he was saying that. That's when I -- he looked at me once when he said, "Things like this don't happen," but he looked at me as though he was looking right through me. He was talking or trying to talk while I was taking these films and mumbling, and I had to cut my time way down because of his breathing. And I asked him once to hold his breath and he couldn't, he just didn't.

Q Did you know who he was talking about when he was talking about Marilyn?

A I had never heard his wife's name, but I assumed that Marilyn must be his wife, but I didn't know at that time whether Dr. Sam knew his wife was dead. He didn't mention anything like that.

Q And there was nobody there?

A There was no one there.

Q And these expressions were made to the room, not to you?

MR. DANACEAU: We object to
this repetition.

MR. MAHON: We object, if
your Honor please.

THE COURT: She has already
answered that. All right.

Q Now, did you recall a time when you noticed the back of his neck -- withdraw that.

Did you notice the back of his neck?

A Yes, I did, when I turned him over.

Q Tell the jury how you happened to notice the back of his neck and how that came about?

A Well, at one time Dr. Steve asked him a question and it was, "Did you know what race they were?" I believe were the words. And Dr. Sam didn't answer that question. He said -- a few minutes elapsed. He was talking very slowly and haltingly and he said, "I thought I saw someone on the beach and something or someone hit me from behind."

Q And when he said that, did you do anything?

A Not at the moment I didn't do anything, but I had finished taking all of the X-rays I could possibly take while he was lying in that position. With that, I believe Dr. Steve left the room and I went out and the three interns were sitting outside. And I asked them if we could turn him over, if they thought it was safe to turn him over, and they said they would come in and help me.

So they came in and asked -- told Dr. Sam they were going to try to turn him over. So the three of them turned him, that is, they picked him up, his body, and I held his head and he was holding his neck, and we turned him over on his stomach so that his face would be down for the next film. I noticed that he had a red mark on the back of his neck to the left side.

Q You noticed that when he was turned over?

A Yes, and I thought immediately about his having said that he was struck from behind.

Q Now, then, I have some X-rays here. Can you identify them?

A Yes, sir.

Q I want to now have you pick out, if you can, out of this package and identify the X-rays that you took that morning. Just pick them out, first, and after you get them picked out -- there are some others in there that you didn't take -- then I will identify them.

A This is one.

THE COURT: That is not one,
did you say?

THE WITNESS: Yes, this is.

Q Is that yours?

A I didn't recognize the writing over here.

Q What?

A I didn't recognize the writing. Someone else has written on them.

THE COURT: You put those
that you did take that morning on that end
and put those that you didn't take up here.

(Witness complies with request.)

Q Now, on each one of these X-ray films there is a red writing, State's Exhibit 96-E. That's not your writing?

A No.

Q Is this your writing, "Left A.P."?

A That's not mine.

Q Is there any writing on any of these films that is your writing?

A No.

MR. CORRIGAN: I want to show the jury. Will you step down here a moment, Miss Huge, so the jury knows what I am talking about?

(Witness leaves witness stand and takes a position in front of the jury.)

Q On each one of these films, Mrs. Huge, there appears to be some writing on each one of the films. You have noticed that, haven't you?

A Yes.

Q The writing in one place on each film is in some kind of white ink?

A Yes.

Q And the writing in the other place on the film is in red ink or in red crayon?

A Yes.

Q Is any of the writing on the film such as we have now illustrated to the jury your writing?

A No, sir.

MR. CORRIGAN: All right. Thank
you.

(Witness resumes the witness stand.)

Q Now, can you identify the films that you say you took on
that morning? Are these in order?

A Well, no.

Q They've got numbers on here now. Let's see what the
numbers are.

A This white writing tells you what the film is. That's
the left side, that's an A.P. view of the open mouth.
That's the cervical spine. (Indicating).

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Q Now, you have picked out as the films you took that morning --

MR. CORRIGAN: Wait until I get
them in order.

Q Now, I want to hand you State's Exhibit B, C -- you see,
we have got that written on there -- F, G, H, J, L and M,
O and P. They are preceded by the No. 46, and those are
the X-ray films that you took on the morning of July the 4th?

A Yes, sir.

Q Now, in the taking of the X-rays, when Sam was in there
that morning, when Dr. Sam was in there that morning, do
you remember anything about his fingers?

A Yes.

Q And will you tell the jury what you remember in that regard?

A Well, I had taken all of the films I could take with him
lying down. It is routine to take a lateral of the cervical
spine in a sitting position --

Q Now, wait a minute. When you use your technical terms, we
lay people don't understand it sometimes, or somebody might
not, and when you say you take a lateral cervical, now, will
you tell us what that is?

A That is a side view with the film at one side and the X-ray
tube at the other side shooting through.

Q Go ahead and tell us now what went on.

A Well, in cases of emergency, where the patient -- where we
are not too well aware of how much damage has been done or

how badly the patient is injured, we never sit them up without a doctor's order. The doctors had told me they thought I could sit him up, but I believe I was alone in the room when I heard him say that "these two fingers are getting numb."

There may have been an intern in there, I'm not sure of that now, and he indicated I thought his third and fourth finger, so I immediately went out and told the doctors what he had said, and that I didn't think I should sit him up.

Q Now, wait a minute. When you heard him say that his two fingers were getting numb, did it indicate anything to you as a technician?

A It did, but I am not a diagnostician. It shouldn't indicate anything to me except that he was injured.

Q But did it indicate anything?

A Yes.

Q What did it indicate to you?

MR. MAHON: Objection.

MR. CORRIGAN: If she knows.

THE COURT: Yes. I think that is beyond her field, I am sure.

MR. CORRIGAN: Well, she is in it a great many years.

MR. PARRINO: She has indicated that it is not her field.

Q Well, when he told you that what did you proceed to do?

A Well, he didn't tell me that. He just said that. He was saying it to himself, his fingers are getting numb. I went out into the hall and asked Dr. Lerch and Dr. Carver and Dr. Brill -- I said, "Do you think I should sit him up? His fingers are getting numb."

And they all came in there then and they said, "Can you take one when we get him on the cart, just one lateral view?" which we do in emergencies. We take one view shooting straight through with the patient lying on his back. You don't get as good a picture that way, and I said, "Well, I'll try one right here on the table."

So they said that was all right, and Dr. Carver held the film holder for me, and I tilted the tube and shot one straight through at 36 inches instead of 72.

Q Now, let me get your technique on the taking of ~~that~~ picture. He was lying flat on his back at the time?

A Yes, sir.

Q And where did you have the film that was going to register the penetration of these X-rays?

A I had the film about three inches below his shoulder on his left side.

Q And where was your tube?

A The tube was on his right side.

Q Then you shot through from the --

A Right to the left.

Q Right to the left. And the recording was made on the left side on this film?

A Yes.

Q Now, will you tell me how far the film was held from his right side?

A It was held right up against his shoulder.

Q And how far was the tube from his neck on the left side?

A Well, I don't know how far the tube was from his neck, but we measure the distance from the center of the tube to the cassette, to the film, not to the object.

Q You measure what?

A We measure our distance from the center of the X-ray tube to the cassette, to the film, not to the object we are photographing.

Q What was the distance?

A The distance was 36 inches, or half of the routine distance.

Q 36 inches?

A Yes, sir.

Q And that is while he was lying flat?

A Yes.

Q Did I get that right: The shot was from the right to the left or from the left to the right?

A From the right to the left.

MR. CORRIGAN:

You may take the witness.

CROSS EXAMINATION OF EILEEN HUGE

By Mr. Danaceau:

Q Did you take any other X-rays of Dr. Sam Sheppard?

A I don't believe so, no.

Q Do you know who took the X-rays on the 7th of July of Dr. Sam Sheppard?

A Mr. William Kerner, another technician.

Q Another technician at Bay View Hospital?

A Yes.

Q Is he their regular technician?

A He isn't there any more.

Q When did he leave?

A He left in the end of October.

Q Do you know where he is now?

A Yes, sir.

Q Where?

A He is teaching at the Carnegie Institute for Technicians.

Q In what city?

A In Cleveland.

Q When you had the X-ray taken of Dr. Sam Sheppard, that was the early morning of the 4th of July?

A Yes.

Q Did he have anything at all around his neck?

A No, sir.

Q Was there any salve or any ointment on his neck at all?

A Not that I know of. I don't believe there was.

Q Did you see him later that day?

A No, sir.

Q When was the last time you saw Dr. Sheppard in the hospital?

A I saw him the day he was out on bail. I don't remember just when.

Q At the hospital?

A Yes. When he came in I saw him.

Q Do you know what month that was in?

A I don't remember, I'm sorry.

Q You were asked by Mr. Corrigan about some writing on these films which you said was not your own. Do you remember that?

A Yes, sir.

Q Will you point out what that writing is that you refer to?

A He was referring to this writing in white ink, which just identifies the film for someone that does not know them, that does not know what views they are.

Q In other words, this first one, the word "Right Lateral"?

A That, I believe, is a skull -- may I see it?

Q Yes, surely.

A It is a lateral view of the skull, and it says "Right lateral." There is a lead marker. If you hold it up to the light -- which I placed on the film when I was taking it,

but it wouldn't probably be recognized by someone not knowing X-rays.

Q So the words "Right Lateral" merely identify it?

A Merely identifies the film.

Q And the next one?

A Is left occipital.

Q And so on. That is all that writing is, merely words of identification?

A Yes.

MR. DANACEAU: That is all.

MR. CORRIGAN: That is all.

(Witness excused.)

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness MARCELLA HAHN, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you tell the Court and jury your name?

A Marcella Hahn.

Q Is it Miss or Mrs.?

A Mrs. Marcella Hahn.

Q Where do you live, Mrs. Hahn?

A I live at 22486 West Lake Road.

Q Is your husband living?

A Yes.

Q What is his name?

A Carl Hahn.

Q And what does Mr. Hahn do?

A He is a cabinet maker.

Q How long have you lived in Cuyahoga County, this County?

A About 40 years.

Q Well, you don't look 40. Now, are you employed, Mrs. Hahn?

A Yes.

Q Where are you employed?

A Bay View Hospital.

Q How long have you been employed at that place?

A About three and a half years.

Q And what work do you do?

A I am a nurse.

Q And were you employed there on the 4th of July, 1954?

A Yes.

Q You, of course, know Dr. Sam Sheppard?

A Yes.

Q How long have you known him, Dr. Sam Sheppard?

A Since '51.

Q Have you been in contact with him during that time, from that time down to the time that he was arrested?

A Yes, more or less.

Q Did you make any observation of what kind of a person he was in regard to being an even-tempered person?

A Very even-tempered.

Q Did you ever see him lose his head?

A Never.

Q Now, on the 4th of July what time did you go to work?

A 7:30 in the morning.

Q Were you there when Dr. Sam was brought in?

A Not when he was first brought in, no.

Q When did you first -- did you see him on that day?

A I saw him when he came to the room from the X-ray.

Q When he came from the X-ray?

A Yes.

Q Now, did you make an observation of Dr. Sam when he came from the X-ray?

A Well, yes.

Q Did you look at him?

A Yes.

Q So that you can now tell the jury what he looked like and how he acted?

A Well, he was in a dazed condition --

Q He was what?

A He was in a dazed condition, and he was holding his neck, and saying, "Oh, my neck, my neck."

He seemed to be in a lot of pain, and his face on the right side was bruised, and I remember trying to give him a drink of water, and he couldn't stand it because his teeth were broken and his lip was all cut here.

Q Did you notice at that time the condition -- did you notice anything about pain or evidence of pain about him?

A Oh, yes, he was in pain.

Q You could notice that and you could tell it as a nurse?

A Yes.

Q And did you take care of him that day?

A Yes, I did.

Q And did he evidence pain through the day?

A Yes.

Q In what way, will you tell the jury, Mrs. Hahn?

A Well, his neck had seemed to give him the most pain. He kept holding onto his neck.

MR. CORRIGAN: That is all.

MR. MAHON: No questions.

MR. CORRIGAN: No questions.

MR. DANACEAU: Well, now, is it necessary for Mr. Corrigan to make that kind of a remark when we say "No questions," to repeat it with a surprised expression?

MR. PARRINO: Say it again,
"No questions."

MR. DANACEAU: No questions. Thank
you very much.

MR. CORRIGAN: I will ask another
question then, if you don't want to.

By Mr. Corrigan:

Q Did you notice anything wrong with his sheets during the time
that you attended him?

A With his sheets?

Q Soiled sheets?

MR. MAHON: Object to the leading
of the witness.

THE COURT: What is the situation?

MR. DANACEAU: No use asking the question any more. He more or less told her what to answer.

THE COURT: Yes. Objection will be sustained.

MR. CORRIGAN: Well, so there will be no question about it that I am not leading the witness, you may be excused, Mrs. Hahn.

MR. MAHON: Oh, thank you.

MR. PARRINO: Thank you, Mr. Corrigan.

MR. CORRIGAN: We haven't any more witnesses. I thought they would cross-examine our witnesses, and that time would be taken up.

THE COURT: Sir?

MR. CORRIGAN: We haven't any more witnesses today, your Honor. I thought they would cross-examine, so I didn't prepare for the abrupt dismissal of the witnesses.

MR. GARMONE: We subpoenaed the balance of them for tomorrow.

THE COURT: I know, but I hate to lose this time.

MR. CORRIGAN: Well, I can't help it.

I'm sorry.

THE COURT:

I know.

Ladies and gentlemen of the jury, apparently we have exhausted our witnesses available for the day, so we will now have to adjourn until 9:15 tomorrow morning, which we will do without any formality whatever.

In the meantime, please do not discuss this case with anyone.

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(Thereupon at 4 o'clock p.m. an adjournment was taken to 9:15 o'clock a.m. Wednesday, December 8, 1954, at which time the following proceedings were had):

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Wednesday Morning Session, December 8, 1954.

(9:15 o'clock a.m.)

Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness CLIFFORD C. FOSTER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Garmone:

Q Will you state your name, please?

A Dr. Clifford C. Foster.

Q Where do you live?

A 1260 Andrews Avenue, Lakewood, Ohio.

Q Are you married?

A No, sir.

Q How long have you lived in and around the County of Cuyahoga?

A With the exception of being away to school, all my life.

Q How old are you, Doctor?

A 47.

Q Did you attend school in the city of Cleveland?

A Yes, sir.

Q What is the first school that you attended?

A St. Joseph Academy.

Q After leaving St. Joseph Academy did you enter high school?

A Yes, sir.

Q What high school did you attend?

A Cathedral Latin.

Q After your graduation from Cathedral Latin did you further your education?

A Yes, sir. I attended the College of Osteopathy and Surgery, Kirksville, Missouri, graduating in 1930.

Q After your graduation in 1930 from the College in Missouri did you further your education abroad?

A Yes. I spent seven months at the University of Vienna, that is at the Allgemeines Krankenhaus, which is a training hospital for the University of Vienna, and that was in the clinic of Professor Neumann, the ear, nose and throat clinic of that particular hospital.

Q And how much time did you spend at that institution, Doctor?

A I would say approximately five months.

Q Now, when is the first time that you took your profession up at the Bay View Hospital, what year?

A Six years ago, 1948, with the inception of the hospital.

Q Had you had some training before coming to Bay View at any other hospital?

A Other than at Neumann's Clinic, I served a preceptorship, or what might be known as an assistantship to Dr. Leonard Rench, a certified eye, ear, nose and throat specialist in the city of Cleveland, and following that is when I went

to the University of Vienna.

Q Do you specialize in any particular branch?

A I specialize definitely in eye, ear, nose and throat.

I am a certified member of the American College of
and
Opthomalogy/ Otolaryngology and have held that, have
practiced eye, ear and nose and throat exclusively in
the past 10 years.

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Q Now, coming down to the 4th day of July, 1954, did you see Dr. Sam Sheppard?

A Yes, sir.

Q And where did you see him?

A In his room in Bay View Hospital.

Q And will you tell the jury the approximate time of your visit in the room that was occupied by Dr. Sam Sheppard?

A The approximate time was 2:10 in the afternoon.

Q Now, after your entrance into the room, did you make some observations of Dr. Sam Sheppard?

A Well, I observed that he had a marked swelling of the right side of his face.

Q Did you make any other observations?

A That his eye was rather swollen and he had an ecchymotic appearance of the eye, that is, it was beginning.

I noticed that he had a faded area on the left side lateral to, I would call it, the thyroid cartilage, but we know it as the Adam's apple.

Q Now, at that point, when you say a faded area, can you be a little more specific on that particular observation, please?

A Well, a faded area would be where there had been an extravasation of blood, but it was more or less fading out. That's the only way I can describe it. Maybe you could describe it as being a livid area.

Q Did you make any further observations of his person?

A Yes. He had a swelling at the base of the skull. As I recall it, it was more to the left side. It was not discernible as far as the patient being erect or lying in bed, but it was discernible if you flexed his neck forward you could see evidence of swelling, and certainly you could palpate swelling.

Q Did you palpate swelling in that area that you have just described?

A Yes, sir.

Q Now, the area that you just described to the jury prior to the last description of the faded mark around his Adam's apple, as a doctor did that indicate injury to you?

A Well, it would indicate that he had -- that the patient must have had some injury to that area.

Q Now, how much time would you say you spent in performing the observations that you have described to the jury and other things that you did while you were in the room?

A Well, the entire time, Mr. Garmone, was from 2:10 and I recall very specifically writing on the chart and noting the time was 2:50, so I would say that I was in the room at least 40 minutes. I did go out of the room to obtain an ophthalmoscope to examine Dr. Sam's eye grounds and his pupillary reflexes, and I asked him about pain, where he had pain. He told me in his neck, as I have described.

He couldn't open up his jaw very well. He was not incoherent but --

Q Well, at that point, during the course of the conversation, was he able to speak fluently?

A Oh, I would say mentally he could, but he had to talk kind of through closed lips. He couldn't open his mouth very well.

Q What was the reason for that, from the observation you made, Doctor?

A Well, I would say an injury to his cheekbone. I know it as the malar bone, and when we have an injury there, it can affect the temporal mandibular joint, which opens and closes our jaw.

Q Now, during that period, were you able to observe how far he was able to open his mouth during the conversation that you have just related? Can you express an opinion?

A Well, he couldn't open it to the full extent.

Q Doctor, when you made this examination where you looked into his eyes, did you do something in that room at that time?

A Well, the room was semi-dark.

Q And what did you do, if anything?

A I didn't tilt the venetian blinds, I lifted the one venetian blind in order to have proper illumination for better evaluation of his injuries.

Q Now, you kept the venetian blind lifted while you made the observations and examinations of his eyes?

A No, sir.

Q Did you later --

A Technically, I used the ophthalmoscope and examined his fundi, the nerve head, whether or not he had any retinal separations that can happen from a blow, and it was following this that I asked him if he had any more pain, and he said in his right chest.

Q Did you do anything concerning that pain in the right chest by way of examination?

A May I answer that in my own way, Mr. Garmone?

Q Yes.

A Using an ophthalmoscope or a small flashlight, you might say, it was certainly not adequate to observe the chest or observe to the full extent his facial injury, and I --

MR. PARRINO: I object to this, your Honor. It is not responsive to the question.

THE COURT: Yes.

Q Well, what did you do regarding the pain that he complained of in the area of the chest, Doctor?

A In order to adequately observe it, I lifted the venetian blind so I had proper illumination.

Q Now, during that period that the blinds were up, was there

some complaint that came from Sam by the way of talk?

A Yes, sir. He complained that the light hurt his eyes, so I kindly dropped the venetian blind.

Q That was the only day and the only time that you had seen Sam, is that right?

A Yes, sir.

Q After the 4th of July, I believe you left the City of Cleveland and went to the City of Detroit?

A That's right. I attended a convention at Detroit.

Q Now, Doctor, I will hand you what has been identified here as Defendant's Exhibit YYYY, and ask you if in this report, hospital report, your report is incorporated therein? Will you look it over and see?

A Yes, sir.

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1 Q And your report is depicted on page 11 of Defendant's Exhibit YYYY, is that correct?

A Yes, sir.

Q Now, during the period that you were in Dr. Sam Sheppard's room, Dr. Foster, did you observe his emotional state?

A Well, I'd say the boy was extremely upset.

Q What, if anything, did you observe him do?

A Well, you mean -- he was lying in bed, he was somewhat restless.

Q Anything else?

A I don't quite get pointedly what you --

Q What is the fact whether or not he was crying during the period you were --

A Oh, yes. I meant to cover that with "upset." He was crying. He was certainly, in my interpretation, rather in mental shock.

Q How long have you known Dr. Sam Sheppard, Dr. Foster?

A Oh, I have known Sam since he has been a little boy. Professionally, I believe Dr. Sam came to Bay View in a professional status in 1951 or 1952. I believe it is '51, the summer of '51.

Q Were you there prior to the time that Sam came to Bay View in a professional status?

A Definitely.

Q And for how long a period prior to his coming?

A Well, that would be -- the hospital opened up in 1948 to '51 would be three years.

Q Now, Doctor, I will again hand you the exhibit that has been marked Defendant's Exhibit YYYY and ask you to read to the jury the report that you made that is incorporated in the Bay View Hospital report.

MR. PARRINO: I want to object on this basis: That it has already been read to the jury by Dr. Steve.

THE COURT: Well, it really speaks for itself, but it may be that it would be useful for other questions later to have them know what is contained in that report.

MR. PARRINO: I have no objections, only that it has been read before, I think on one occasion, at least, but go ahead.

A Well, under "Findings," I have here "A marked swelling, an ecchymosis of the right eye and orbital tissue extending over entire right side of face.

"A contusion is noted on the left side of the neck anteriorly.

"2. Marked edema, suboccipitally."

Under "Diagnosis," I have "Contusion of eye and orbital adnexa.

"2. Probable fracture of maxillary," and in parentheses "the malar and zygomatic bone."

I don't have "bone" there, but I refer to that as malar and zygoma.

"Contusion of left side of neck. Contusion of suboccipital tissues.

"Recommendation: Intermittent hot and cold packs or ice bag to the face, and to X-ray the facial bones," meaning the maxillary and the zygoma or the malar bone.

Q Now, this report was prepared by you?

A Definitely.

Q And on what day?

A July 4, 1954.

Q Shortly after you had made the observations and the observation that you have described to the jury, is that correct?

A Yes, sir.

MR. GARMONE: That is all,
Doctor.

CROSS EXAMINATION OF CLIFFORD C. FOSTER

By Mr. Parrino:

Q Now, I see in this report, Doctor, that there was something about a fracture of the --

A Malar.

Q Where is that, please?

A "Probable fracture of the maxillary. (Malar and zygoma.)"
That is part of the maxillary bone.

Q Where would that be?

A That is the bone, Mr. Parrino, that is more or less the lateral side of the orbit, and the zygoma bone is this bone here that is an extension of the temporal bone.

Today it is known in the later anatomies -- the anatomy I have refers to it as the malar bone, but I notice in later nomenclature that this is the -- this is known as the whole zygomatic arch.

Q Well, as a matter of fact, you later learned, as a result of certain X-rays that were taken, that there was no fracture of that bone, isn't that correct?

A Yes, sir. I assumed there was no fracture.

Q Did you determine that or did you not?

A By X-ray?

Q Yes.

A I assumed that inasmuch as I did not have an X-ray report to the fact that it was not fractured, that it was not fractured.

Q Well, you knew that X-rays were taken of the bones of his face, did you not?

A Yes, sir.

Q Did you ever examine those X-rays?

A I looked at them very briefly on a wet film, and the technique used would certainly not bring out, by proper positioning -- let me state it this way --

Q Well, the question is simple, I think, Doctor:

Did you ever examine the X-rays?

A Yes.

Q And when did you examine them?

A I examined those after I had left Dr. Sam's room, and they were wet. They were still in solution.

Q What time did you examine the X-rays?

A Well, I would say approximately it was after I left there, 2:50 or five minutes of 3, 3 o'clock.

Q And you say the X-rays were still wet?

A Yes, sir.

Q On those wet X-rays did you see any fracture? Yes or no.

A No.

Q Did you examine those X-rays later?

A No.

Q At any time?

A They were not suitable, Mr. Parrino, for my observation.

Q Well, did you examine those X-rays later at any time?

A No, sir.

Q Now, Dr. Foster, you have examined a patient, have you,

before the 4th, who was suffering from brain injuries, in your experience as a doctor?

A Yes, sir.

Q And I presume that you have done that on numerous occasions in your years of work?

A In suspected brain injuries, yes, sir.

Q Well, have you ever examined persons with actual brain injuries? Yes or no.

A Yes, sir.

Q In numerous cases?

A I wouldn't say numerous, no, sir.

Q Now, in some of these cases that you have examined where there were brain injuries, did you ever examine the eyes?

A Yes, sir.

Q And in these cases where there was brain injuries, is there something unusual that occurs insofar as the eyes are concerned?

A Well, --

Q The eye grounds.

A Do you want a recent injury or one that has been for some time?

Q A recent injury, within the last 12 hours?

A Two hours, eight hours, twelve hours?

Q Yes.

A Would you restate that question again, Mr. Parrino?

Q Yes. Where you have a brain injury and you examine that patient within, oh, eight or nine hours, what happens to the eye grounds?

A Well, edema, papule edema, as it is known, may occur.

Q What does that mean?

A A swelling of the nerve head, but depending on where the brain injury has occurred.

Q What else happens to the eye grounds where you have brain injury that you can observe within eight or nine hours?

A Perhaps loss of vision. Maybe that isn't answering your question directly.

Q What else?

A All that I can state would be papule edema.

Q Well, you didn't find any of that with Dr. Sheppard, did you?

A No, sir.

Q What does your report say as to what the results were of your examination of his eyes?

A The report states nothing, because I did not find any papule edema.

Q So that, then, your findings were negative as to the eye grounds, right?

A Yes, sir.

Q They were normal as to the eye grounds?

A Yes, sir, to the best of my knowledge.

Q Now, you say that you examined the anterior part of the neck, isn't that correct, Doctor, or the front of the neck?

A Observed, yes, sir.

Q And there you saw what you described to Mr. Garmone as a faded area, is that correct?

A Yes, sir.

Q And what was the size of this faded area?

A I would say three-quarters of an inch by three-quarters, something like a thumb mark.

Q A thumb mark?

A Yes, sir.

Q Now, there was no laceration there, was there?

A Definitely not.

Q Now, Doctor, where I would take my thumb and press it up against some part of my body, like my forehead here, with some force, for some period of time, say, minutes, 10 minutes, an hour, two hours, and apply substantial force, then I remove it, will you describe to the jury what happens in that area beneath where the force was applied?

MR. CORRIGAN: Object to the question.

THE COURT: He may answer it.

MR. CORRIGAN: There is no evidence that Sam Sheppard put his thumbup on his forehead and held it for an hour. I object to that.

THE COURT:

You may answer.

A Is this a pressure or impact?

Q A pressure, as I have indicated, pressure against the forehead, against the thigh, against the arm, any part of the body, what happens to that part of the body at the skin and beneath the skin where the pressure is applied?

A In my opinion, at first it would be faded.

Q At first it would be faded, you say?

A By that I mean blanched.

Q Yes.

A Depending upon the force of the pressure used, that would injure the capillaries, and those capillaries could extravasate blood and you would have a blue discoloration.

Q I see. And for how long would that continue, that blue discoloration? How long could you see it? Minutes later or hours later?

A Well, that would be rather --

Q In your experience?

A -- difficult to tell. I haven't had any experience of one putting a thumb and holding it that long, Mr. Parrino.

Q I see. Well, assume that a person would be holding his hands behind his neck in this way (indicating) to support the neck -- can you see that, Doctor?

A Yes, sir.

Q (Continuing) -- and perhaps with his thumbs in front of the neck, in the anterior portion thereof, and holds the back with force for some time, would you have that fading in the back of the neck?

A Are we talking about the back of the neck or front?

Q Yes, we are talking about the back now. Would you have that same fading in the back of the neck?

A Well, I suppose you could, yes, sir.

Q There is no doubt about it, is there, Doctor?

A Well, there's always doubt and there's always probability, Mr. Parrino.

Q I see. Now, at the time that you saw Dr. Sam, did you have any conversation with him?

A Yes, sir.

Q Did you ask him what happened on the morning of the 4th and the night of the 3rd?

A Yes, sir.

Q And did he tell you?

A Yes, sir.

Q What did he say?

A I asked him what happened.

Q What did he say?

A He said that all that he could remember was a scream, that he ran upstairs, using his word, he was clobbered; that he didn't know whether it was by one or two people or assailants, and that he followed an assailant to the beach and there he was struck again.

And I said, "Well, Sam, what in the world were you hit with?"

And he said, "I don't know, Cliff." He said, "I think it was a hand, a judo blow, a fist."

Q He said that to you?

A Yes, sir.

Q All right. What else did he say?

A And that he awakened lying in the water with his head up on the beach.

Q Anything else?

A Yes. He said, "Why couldn't it have been me rather than Marilyn to be killed?"

Q Anything else?

A Yes, sir. He said, "And to think that I'm a suspect in this case, that the detectives have accused me of murdering Marilyn."

Q Now, is that all he said, to the best of your memory at this time?

A To the best of my memory, that's it, yes, sir.

Q You didn't make any notes of everything he said to you, did you?

A No, but I have a pretty retentive memory in that line.

Q Good. You didn't put any of that information on the hospital chart, did you?

A No, sir.

Q Now, you say that Dr. Sam was in a state of mental shock when you saw him?

A That would be my description of it, Mr. Parrino.

Q What is mental shock?

A Well, shock --

Q No. Doctor, mental shock?

A I know. I want to get to mental shock. Shock is described as a supression of vital functions either by injury or emotional factors.

Q That is your total description, is it, sir?

A Well, I can go in -- I mean, how far do you want me to go?

Q I think that is enough for the time being, sir.

Now, you say that he was somewhat restless, is that a fact?

A Well, a man crying at intervals and being upset, I would say the man was restless. He was certainly uncomfortable.

Q Well, he wasn't -- he didn't appear to be unusually uncomfortable or unusually restless to you, did he?

A For him, yes, sir.

Q For him. But in answer to one of Mr. Garmone's questions, you did state that he was just somewhat restless, did you not?

A I probably used that term.

Q Yes. Now, in examining the man, and speaking with him, did he appear alert to you?

A I would put it as alert as one can be under the circumstances.

Q How?

A As alert as one can be under the circumstances.

Q Well, using the term alert as we normally know it to be, laymen, the jury, the persons in this court room, yourself, in the general sense of the word?

A As far as cerebrating, yes.

Q Did Sam appear to be alert?

A As far as being able to think, yes, sir.

Q And was he able to answer all questions clearly and lucidly?

A Well, I don't think my questions were that pointed for

Q Well, would it bring about the swelling that you discovered by your palpations?

A No, sir. I am of the firm opinion that it had to come from injury, not from holding.

Q Now, Doctor, have you ever observed, in your experiences where concussion was present but there was absent the papule edema?

A Will you state that again, Mr. Garmone?

Q In your experiences, have you witnessed where there was present a concussion but an absence of papule edema?

A You mean palpable edema?

Q Palpable edema.

A Certainly. I have picked them out of automobiles with a broken neck with no edema or no palpable edema.

Q Doctor, have you ever been present in surgery with Dr. Sam?

A Many times.

Q And during that period of times that you were present in surgery with Dr. Sam Sheppard, were you able to observe his temperament?

A Yes, sir.

Q Will you tell the jury what kind of temperament Dr. Sam Sheppard has under the conditions that your observations were made in surgery?

MR. PARRINO:

Now, if the

Court please, for the purposes of the record,

we will admit that Dr. Sam Sheppard had a very even temperament while he was performing surgery.

MR. GARMONE: May I have an answer to the question without admittance by the State?

MR. DANACEAU: All right. Go ahead.

THE COURT: Let me get the question again.

MR. GARMONE: There is no objection to the question. They just want to admit that Dr. Sam had an even temperament in surgery. Is that right?

MR. PARRINO: Yes, while he was performing surgery he had an even temperament.

THE COURT: Let me get the question.

MR. GARMONE: Answer the question, Doctor.

THE WITNESS: Judge Blythin wants to get the question.

MR. GARMONE: Pardon me. Read the question, please.

(Last question read by the reporter.)

THE COURT: Well, he may say
that.

Q Answer the question.

A I would say that Dr. Sam in surgery is a very calm, even
surgeon. I know I have observed the boy in many instances
where if it were me working, perhaps under the conditions --

MR. PARRINO: I object to this,
your Honor.

MR. GARMONE: It is in response
to the question.

THE COURT: Yes.

A (Continuing) I would say he is quite a calm surgeon and
I have never seen him really become flustered in surgery.

Q Have you, in your experiences as a doctor seen other
doctors lose their temper in surgery, Dr. Foster?

A Well, I have seen --

Q You can answer that yes or no.

THE COURT: You can answer that
yes or no.

A Say that again, will you, Mr. Garmone?

Q Have you in your experiences in surgery seen other doctors
lose their temper and calmness?

A Definitely yes.

MR. GARMONE: That is all, Doctor.

Thank you.

RE-CROSS-EXAMINATION OF DR. CLIFFORD C. FOSTER

By Mr. Parrino:

Q Will you name one doctor that you saw lose his temper while performing a surgical operation, Doctor?

A I don't think that -- this may be beside the point, Mr. Parrino, but --

Q How?

A I don't think that is a fair question to me, Judge, to name a doctor, professionally --

THE COURT: You say you have and you used it as a basis. I think you ought to be able to at least point out one.

A Yes, I have seen Dr. Lusinger over in Philadelphia, when an assistant would get in his way, he would rap his knuckles. In fact, I was assisting him one time and he rapped my knuckles.

Q I see. And you would call that losing his temper?

A Well, and I also --

Q The point is, sir, this -- will you answer my question?

A Yes, I have seen him lose his temper by throwing a hemostat down and obviously losing his temper. I have seen him -- I mean, I have seen that situation, and in some situations the dismissal of a surgical nurse because perhaps she

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didn't hand over the right instrument at the right time.

Yes, sir, I have seen those things.

Q Because that nurse would not be competent where a human life was at stake, is that correct?

MR. GARMONE: Object to the question.

A Oh, I wouldn't say competent.

THE COURT: The objection will be sustained.

Q Now, Doctor, you say that you didn't think that Dr. Sam Sheppard held his neck for two hours, is that correct?

A You proposed the question of holding a neck -- or holding an area for a certain length of time. I stated that I don't know.

Q How?

A I don't know, but I don't think that Dr. Sam held his neck continuously for any two-hour period of time.

Q Were you at Sam's home on the morning that this crime occurred?

A No, sir.

Q Did you see him when he was -- withdraw that.

You didn't see him as he left the home being taken to the automobile enroute to the hospital, did you?

A No, sir.

MR. GARMONE: Objection. He

says he didn't see him until some time that afternoon and that was the only time that he did see him.

THE COURT: I am not sure that he had said that, but he does say that he did not see him.

Q You don't know whether or not Dr. Sam Sheppard was holding his neck for one minute, five minutes, ten minutes, one hour or two hours, isn't that correct?

A Continuously, you are correct.

Q How?

A Not for any continuous time. I don't know that.

Q You didn't see him until 2:10 in the afternoon?

A Yes, sir.

MR. PARRINO: That is all.

MR. GARMONE: That is all,

Doctor. Thank you.

MR. CORRIGAN: That is all.

(Witness excused.)

MR. CORRIGAN: Dr. Koch.

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Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness DR. RICHARD E. KOCH, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DR. RICHARD E. KOCH

By Mr. Corrigan:

Q Will you tell the Court and jury your name?

A Richard Edwin Koch.

Q And what is your business or profession?

A I am a dentist.

Q Where do you live, Dr. Koch?

A 23044 Clifford Road, North Olmsted.

Q And where is your office located?

A 4352 West 222nd.

Q Of what school are you a graduate?

A Western Reserve University.

Q What year did you graduate from Western Reserve University?

A In 1951.

Q And have you practiced your profession in this community ever since your graduation?

A No, I have not.

Q Where have you been?

A I practiced originally in Norwalk, Ohio, for about eight

months, and then I practiced --

Q And then came to this community?

A That's right.

Q Were you born in this community?

A Yes, I was.

Q Where were you born?

A I was born here in Cleveland, on the west side.

Q On the west side?

A Yes.

Q And attended schools in Cleveland?

A Yes.

Q Are you a married or single man?

A Married.

Q Do you know Dr. Sam Sheppard?

A Yes, I do.

Q Was he a patient of yours?

A Yes, he was.

Q Do you know when you saw him prior to the 4th of July, 1954?

A I saw him prior to that on June 4, 1954.

Q And at that time did you examine his mouth?

A Yes, I did.

Q Had he been a patient of yours for some time before that?

A He had been a patient of mine -- the very first time was 8-26-52.

Q And how many times had you had the -- had you attended him

prior to June, 1954?

A Six times.

Q You were familiar with his mouth?

A Yes.

Q Familiar with his teeth?

A Yes.

Q Did you see him after July 4, 1954?

A Yes, I did.

Q And what was the date that you saw him after July 4, 1954?

A That was July 15, 1954.

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Q Was there any difference in the condition of his mouth and his teeth after July 4, 1954, than there was before that date?

A Yes. And I will read it, if you don't mind.

Q What is that?

A I shall read what I saw in his mouth at that time.

Q Yes.

A "Examination and X-ray of the upper right side of his mouth revealed both the upper right cuspid and upper right first bi-cuspid slightly loose and chipped."

Q Wait a minute, now. Will you tell the jury what the upper right cuspid is?

A The upper right cuspid is the eye tooth, as it is commonly called, the eye tooth. The upper right first cuspid, which is right here, is the tooth back, one back right next to that.

Q That is the sharp tooth here?

A That's right.

Q Sometimes it is called a dog tooth?

A That's right.

Q That was loose?

A Slightly loose, yes.

Q And the one next to it?

A Also slightly loose.

Q Did you see any damage there that had not been there when

you had examined him on June 14th?

A Yes. Both of the teeth were chipped.

Q And did you have the extent of the chipping?

A Only by -- I do have the extent. It is an approximation, because there is no way you can measure, but it is approximately -- they were both chipped approximately an eighth to a quarter of an inch.

Q And there is an outer surface, too, what do you call that?

A Beg pardon?

Q The outer surface of the tooth, what do you call that?

A You mean the enamel?

Q Well, there is something called the dentin?

A Yes.

Q What is the dentin?

A It was chipped. You have the covering of the tooth -- the crown of your tooth with a layer of enamel, which is about an 1/8 of an inch in thickness, and the chip was through it even into the dentin, which is beneath the enamel. It was through in both cases.

Q Did you make any observation about his mouth at that time?

A Only that he was still -- his mouth was still lacerated on the inside alongside the teeth.

MR. CORRIGAN:

Cross examine.

CROSS EXAMINATION OF RICHARD E. KOCH

By Mr. Danaceau:

Q Doctor, you say you examined him on July 15th and you found two teeth slightly loose?

A Yes.

Q Was that behind the place where the swelling was on his face?

A I believe it was approximately in the same location.

Q So that if he received a blow or an impact of some sort, or if his cheek struck something, that would be the -- the looseness of the teeth would be right behind that spot, is that correct?

A Would you repeat that, please?

Q Well, I will withdraw that, sir. I believe you have already answered that.

Have you examined his teeth since July 15th?

A No.

Q Will you step down and examine him at this moment and see whether they are loose or not?

MR. CORRIGAN: Dr. Flick.

MR. DANACEAU: Just a minute.

MR. GARMONE: Are you through with him?

MR. DANACEAU: I don't believe you

heard the question.

MR. GARMONE: I am sorry. Go ahead.

MR. CORRIGAN:

What was the question?

I missed it.

THE COURT:

He asked him to examine
the teeth to see if they are loose now.

(Witness examines defendant's teeth.)

A I would say not.

Q You would say not?

A That's right.

MR. DANACEAU:

Thank you very
much.

(Witness excused.)

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness GERVASE CHARLES FLICK, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you state your name?

A Gervase Charles Flick.

Q Why do you read your name off an envelope?

A What's that?

Q I say why do you read your name off an envelope?

A Why?

Q Yes.

A Well, I don't have to. I know my name; I think I do right now, anyway.

Q I saw you take the envelope out and read your name off.

A Well, I am careful.

Q How do you spell your name?

A G-e-r-v-a-s-e.

MR. PARRINO: He is looking at it.

Q What is your business or profession?

A Osteopathic radiologist, an osteopatthic physician.

Q And where do you live, Doctor?

A 3137 Rocky River Drive, Cleveland.

Q How long have you lived in this community?

A I think three years yesterday.

Q And where did you live prior to coming here?

A Well, for 23 years, or a little better, I was in Boston, Massachusetts, at the Boston -- The Massachusetts Osteopathic Hospital as radiologist, and previous to that I was in Delaware, Ohio, at the old sanitarium down there from January '25 until almost '28. That is when I started.

Q Now, do you specialize in some branch of medicine or surgery?

A Well, I specialize in radiology, diagnostic and therapeutic. In Boston I was doing quite a bit of internist work. In Delaware I was doing internist work with radiology, because it was a smaller hospital, 50-bed hospital.

Q The term that is used by doctors for that particular specialty is roentgenologist, is that the term that is used?

A Yes, roentgenologist, in honor of Roentgen, who discovered it.

Q Discovered the X-rays?

A That's right. In 1903, about, I think.

Q And in order to be a roentgenologist, and recognized as such, does it require special training?

A Yes, it does.

Q And have you had that special training?

- A Yes. I am the second osteopathic radiologist in Ohio.
There was only one here when I started practice here, so
I --
- Q Now, then, do you do the radiology work at Bay View Hospital?
- A Yes. I think we do close to 8,000 cases a year. It runs
between 25 and 30 a day.
- Q And the taking of the picture of the X-ray, the picture
itself, do you take the picture?
- A No. I haven't taken any pictures since I have been here.
We have technicians that do that.
- Q There are people specially trained to operate those machines
and take the pictures?
- A That's right.
- Q Now, Mrs. Huge was here yesterday and testified that she
took some pictures of Sam Sheppard.
- A That's right.
- Q You are familiar with those X-ray pictures?
- A Yes.
- Q Is that correct, Doctor?
- A Yes, I am familiar with them.
- Q Now, after the picture is taken, does it require the inter-
pretation -- the interpretation of those pictures, does
that require special training and knowledge?
- A Yes, it does.

Q Do you have that?

A I should think I was qualified.

Q Now, the X-ray pictures that were taken or films that were taken on the 4th day of July, did you examine those?

A I did.

Q Now, I will hand them to you. I will hand you what has been marked in this courtroom as State's Exhibits 46-B, C, D, E, F, G, H, J, L, M and P. Will you look at those films that I have just given to you, Doctor, and state whether or not you can identify them with July the 4th, 1954, and Sam Sheppard?

A Yes. These films have the imprint of Bay View Hospital and Sam Sheppard's name, and, as I recall, I identified these for Dr. Gerber several months ago.

Q And where were they the last time that you saw them, Doctor, before you saw them today?

A Well, Dr. Gerber's office, I suppose. I don't know how to identify it by any other classification.

Q When did you see them in Dr. Gerber's office?

A I don't know that date.

Q Well, if you can approximate it. Was it along in July of this year?

A I would say so.

Q Do you recall the date of the -- the time -- never mind the

date -- do you recall the time of the inquest that was held in Bay Village? Did you know of that event?

A Well, I didn't have much to do with that.

Q No. Did you know --

A I recall that there was one made.

Q Now, was it after that that you were in Coroner Gerber's office?

A Yes.

Q And were you requested by him to bring those films to his office?

A That's right, I was.

Q And did he then take possession of them?

A Yes. I identified them and he took possession.

Q And that was the last you saw of them?

A That's the last I have seen them.

Q Until you have seen them today?

A That's right.

Q Now, those films that I have handed to you, does one of them show an X-ray of the second cervical vertebra?

A Yes, it does.

Q And which film is that that shows the --

A This film.

Q That is marked State's Exhibit 46-J.

MR. CORRIGAN:

This is introduced in

evidence, and I would like to have the jury look

at that film now.

MR. PARRINO: No objection.

MR. CORRIGAN: Hold it up so you
will be able to see the outline.

(Jury examines X-ray.)

Q Now, Doctor, this picture that the jury has just looked at shows the outline of the bony part of the jaw and shows the head resting upon the atlas of the spinal column, and it shows the cervical vertebrae, that is the vertebrae that is in the neck, is that right?

A That's right.

Q And when you talk about the second cervical vertebra, first you have the atlas upon which the head rests and twists and turns, and then the next vertebra is number what, the next bone?

A Well, the third. Atlas axis and third. The third cervical.

Q So the second cervical vertebra would be the bone of the spine just below the axis, is that right?

A Yes, first, second and third.

Q First we have the bone that we twist our head on, that the head rests on, and the next bone is the second cervical vertebra. Did your examination of that film show in which direction the picture was taken?

A Well, it shows that it was taken with the film on the left side.

Q The film on the left side?

A Yes.

Q And the rays that were penetrating through the neck were coming from the right side?

A That's right.

Q And the result of those rays penetrating through the neck, through the lower part of the jaw, how was that registered on the film that was on the left side, just what is the process of that?

A Well, it penetrates the bone, and you get an idea of the bone density.

Q Well, the result is that some of the rays go through, do they not?

A Yes, and hit the film.

Q And hit the film, and some of the rays are stopped by the bony structure?

A Yes.

Q And the bony structure then throws a shadow on the film, is that not so, Doctor?

A You see the rays that penetrate, the rays that penetrate have to meet the film before they, of course, would give you a picture.

Q Well, in X-rays we are dealing with shadows, aren't we?

A Yes.

Q Now, then, did you see in examining that film any injury, or what indicated to you there was an injury to the second cervical vertebra?

A Well, I saw a shadow that was consistent with a separation of what we call the inferoposterior, the lower back tip.

Q There was a chip there?

A Well, yes -- tip.

MR. PARRINO: He said tip.

A I said the tip. The separation of the tip, which would be a chip. The chip refers to the size. That was a little thing, and, of course, it is what we characterize as a chip fracture.

Q That's a c-h-i-p, chip fracture?

A Yes, chip, just like a wooden chip.

Q And in this Exhibit 2 -- no -- Defendant's Exhibit YYY --

MR. GARMONE: YYY.

MR. CORRIGAN: YYY. Thank you.

Q -- YYY, Page 23, appears your report, does it not, or a copy of your report?

A Yes.

Q And do you have your original report here?

A This is my original report.

Q Well, taking your original report, you have the term lateral neck in it?

A Lateral neck.

Q And does that refer to this film marked as --

A The one we showed around.

Q What?

A It refers to the film we showed around. It refers to this film.

Q That we showed to the jury?

A That's right.

Q And what is your statement as reported on that particular film, lateral neck?

A I said, "There is a chip fracture in the inferoposterior margin of the second cervical vertebral spinous process."

That's called the spinous process, that one in the

back.

Q Is there anything further that you state as to the lateral neck?

A Yes, there is.

"There is a rather marked hypertrophic change at C5-6. As a matter of fact, there is bridging between these vertebral bodies."

And that refers to this. (Indicating). I mentioned this and then I mentioned this (indicating).

Q Oh, you've got to get down here because the jury can't see what you are talking about unless I hold it up.

MR. CORRIGAN: (To the jury.)

Can you see that if I hold it up there?

(Thereupon the witness leaves the witness stand and stands in front of jury.)

Q Now, point out --

A Well, this is the chip that I saw, but down here is what I call a bridge. See, there's various terms to describe that, lipping or spiking or bridging.

MR. CORRIGAN: Can you see what he is pointing to?

Q Yes.

A Lipping, spiking or bridging.

Q And this --

A This other is the chipping.

Q That is up here on the second cervical?

A It's right here, it's right below. Yes, second.

Q Right below.

A This other is the fifth and sixth.

MR. CORRIGAN: All right.

(Witness takes witness stand.)

MR. CORRIGAN: Cross-examine.

CROSS-EXAMINATION OF DR. GERVASE FLICK

By Mr. Parrino:

Q Now, Dr. Flick, when was the first time that you saw Sam Sheppard on the 4th, if you saw him on the 4th?

A I saw him at 12:30. I wrote on the chart that I found no evidence of skull fracture. I wrote on his chart in the progress notes.

Q And how did you determine that?

A What?

Q When you say you found no evidence of skull fracture, how do you come to that conclusion?

A Well, I reviewed all these films, of course. The two apparent re-focalized films here. All the rest of them were in here, see.

Q Let me get this correct. I'm sorry, but I want to understand this, if I can.

At 12:30 p.m., July 4th, was the first time that you

saw Sam, right?

A That's right, I saw him.

Q These pictures or X-ray film that we have here are those that were taken by Eileen Hoge, is that correct?

A Yes.

Q And do you have any information as to what time those pictures were taken?

A Well, no, except earlier in the morning. As I remember, they sent for me with the idea that I should come and interpret the skull films to see --

Q I see. And what time did you arrive there that morning?

A Well, I can't tell you definitely, but I would say that it was 'about -- it must have been around ten o'clock or a little later I looked over the films.

Q How?

A It was around ten o'clock on Sunday, July 4th, or possibly a little later.

Q What time was it when you first went over the films?

A Well, I went over the films that morning.

Q About what time?

A Well, let's say between ten and 12:30 sometime.

Q Where were the films when you went over them for the first time?

A I think they were in my office.

Q Was anyone present at that time?

A Not that I recall. Do you mean while I was interpreting?

Q Yes.

A Not that I recall.

Q How did the films get to your office?

A Well, I don't -- I can't tell you exactly whether Mrs. Huge put them there or whether a resident or an intern put them there.

Q Did Dr. Steve put them there?

A I wouldn't know. I wasn't -- you see, I didn't get there until ten o'clock.

Q I see. Then all that you know is that shortly after you got there you found the films in your office ready for your examination and interpretation, is that correct?

A That's right.

Q You did not examine the films at all while they were wet?

A No, I don't think I did. I don't know whether I did or not, but I don't think I did.

Q After an X-ray is taken, I presume that that negative, if I use the correct word, is developed, is that correct?

A Well, it isn't a negative until it is developed.

Q I see. Well, this film that we have here before us, how long does it take that film to dry?

A Well, in our dryer, with very few films in it, they should dry anywhere within 25 to 30 minutes.

Q And then after you remove the film from the X-ray camera,

you can take that film, develop it and within 25 or 30 minutes, it is in the process of being dried, is that correct?

A In the process of being dried?

Q Yes.

A Yes, I would subscribe to that.

Q And then within a half hour, let us say, that film will be dry, ready for your interpretation, is that correct?

A Yes, I would say so.

Q Now, while the film is -- withdraw that.

Have you ever looked at film, X-ray film, that was still wet?

A Oh, daily, almost.

Q That is when you are in a hurry and you want to immediately --

A Well, an emergency or something.

Q Yes. When there is some grave and serious emergency and you want to look at it quickly, isn't that correct?

A That's right.

Q Now, as you look at wet film, isn't it a fact, Doctor, that if you examine it carefully enough you can see on wet film substantially everything that you can see on dry film, isn't that a fact?

A No, I don't subscribe to that.

Q You wouldn't. Well, then, why is it that in the case of an emergency you look at wet film?

A Well, you do the best you can in a case of emergency.

That's why, I understand, it's an emergency.

Q I see. But even on wet film you can get fairly substantial impressions as to what is the nature and extent of a particular injury, is that right?

A You are getting kind of complicated now.

Q How?

A You are getting kind of complicated, fairly substantial and a lot of relative words.

Q Well, I'll withdraw the question.

Even on a wet film, you can see pretty well what the nature of an injury is?

A It depends on how gross it is.

Q I see. Were the injuries very gross in this case?

A Well, here they are.

Q No. I'm asking you this question, sir: Were the injuries very gross in this case?

A As regards size, no; as regards effect, they may have been. It depends on what category you are talking of.

Q As regard to size, they were not gross, is that correct?

A No, not visually gross.

Q Yes. And as regard to -- what is that other word you used?

MR. CORRIGAN: Category.

A Category, importance. That wouldn't be very big to put in your hand, it would be pretty big in your eye.

MR. PARRINO:

Would you read

that answer that he made just a few minutes ago in regard to size?

(Answer read.)

Q As regard to size, they were not very gross, these injuries, is that correct?

A That's right.

Q But as regard to effect -- that is the word you used -- as regard to effect, they may have been, isn't that correct?

A Yes. That is, indirectly they may have been as regard to effect.

Q Well, that is what you said?

A Yes, that's what I am saying, as regard to effect, but you'll have to distinguish now between effect on the bone or effect on the tissue around it.

Q Now, at whose order were these X-rays made?

A I don't know that, either. They weren't made at my orders.

Q Under whose directions were these X-rays made?

A That, you would have to ask -- that would be a question for Mrs. Huge to answer, not me. They hand me a package. I don't know how the package was made up.

Q According to the information you had, who were the doctors in charge of Sam?

A Dr. R. N., Dr. R. A., that would be his older brother and father.

Q Dr. R. N., that's Richard N. Sheppard, according to your records, was in charge of this patient, is that correct?

A Partly.

Q Dr. Richard Sheppard, Sr., was also in charge of this patient, does your record show?

A Partly, but it really means that I make records for these people, these doctors whose names are here.

"Referring doctor: R. A. Sheppard, R.N. Sheppard," means that I make -- that I see that they are sent records. That's what it really means.

Q Well, does your information show that Dr. Stephen Sheppard is in charge of this patient?

A Yes. His name is on, too. Dr. S. A. Sheppard. Three Sheppards are on.

Q So all of them, according to your official records which you have with you, were in charge of the patient, is that correct?

A No. That's a wrong inference. All of them that appear here were to get copies of this report. That's all it means to me.

Q All right. How many copies of this report were there?

A Well, according to our signal with my secretary and me, there were six copies. She gives my initials, her initials, and then the number of copies she made.

Q And who got these six copies?

A I got one of them.

Q You got one.

A Presumably these three doctors got one.

Q Well, don't you know?

A I can't follow them out. I'm not a messenger boy. I just do what I'm told to do.

Q I see. Well, don't your records show who got the three others?

A (No response.)

Q Well, let me ask you this: Did Richard get a copy, according to your records?

A I don't know. She was told to send him one. That's what this tells me.

Q Did Steve get a copy?

A Presumably, from this, I would say it was sent to him.

Q And Richard, Sr., got a copy, according to that?

A Yes.

Q And what happened to the other two copies?

A Well, I suppose one went on the chart.

Q One went on the chart.

A That accounts for five, doesn't it?

Q Yes.

A I don't know who got the sixth one.

Q all right. Now, when did these people get these copies, according to your records?

A Well, the girl wrote this -- typed this report on the 6th.
That would be Tuesday, with the 4th on Sunday.

Q They wouldn't be mailing these copies to Richard and Steve
and Richard, Sr., would they, at the hospital there?

A This is when she wrote them.

Q What is that, please? 7-6-54?

A Yes. Sunday was the 4th, Monday the 5th, Tuesday the 6th.

Q According to this information on that record you brought
into this court room, copies of your official report
as to the nature and extent of the injury to Sam's neck
were not sent to Richard, Richard, Sr. and Steve until
two days later, July 6, 1954, is that right?

A Now, wait. The content of this was sent to them on the 6th.

Q All right.

A Is that all right?

Q That's fine. Thank you. Now, do you have that view of
the neck there again, please, of the second cervical?

A That's it.

Q Now, we are referring to State's Exhibit 46-J again.
Was this the only X-ray taken of the cervical vertebrae
of Sam's neck?

A Taken when?

Q On the 4th.

A Yes, it's the only one I know of.

Q Well, this was the only X-ray that was submitted to you

by Mrs. Huges, apparently, that had a view of the second cervical, is that correct?

A Well, I think maybe if we looked on some of these others of the lateral skulls we might find something. I don't know.

No, that's cut off. Well, these are over exposed, of course, that low down, so they wouldn't be of any diagnostic quality.

Yes, that's the only one.

Q Now, will you come down for a minute, please?

MR. PARRINO: If the Court please, I think the jury might appreciate a little recess at this time. We might be a little longer yet.

THE COURT: I was wondering if you were going to get through.

MR. PARRINO: We might be a little longer yet.

THE COURT: Ladies and gentlemen of the jury, we will have a few minutes' recess at this point. In the meantime, please do not discuss this case.

(Recess taken at 10:50 o'clock, a.m.)

the 7 Q Now, when you got to your office that morning after being
me called, all of the film that has been shown to you here
this morning was in your office awaiting your interpretation, isn't that correct?

A Well, I'm pretty sure it was.

Q Will you check that, please?

A How can I check it? I don't know whether it was in there or not. I don't know whether it was in my office when I went there.

Q Well, you looked at -- withdraw that.

A I looked at all these films on July the 4th.

Q And you looked at all these films on July 4th when you arrived at your office that morning?

A That's right.

Q And at that time all of the films that were in your office that we have here in the courtroom were dry, isn't that correct?

A Yes, I would say so.

THE COURT: Mr. Parrino, let's
be sure that the doctor knows. There is a group,
a batch of films other than this, and he may be
referring to the -- are you referring to these
alone?

THE WITNESS: These alone.

THE COURT: Or do you know of the

others?

THE WITNESS: You mean the others
that I gave you people?

MR. PARRINO: Oh, no. Those others
were taken on different days, your Honor.

THE WITNESS: This is all that was
taken July 4th.

THE COURT: Well, all right.
You referred to all the plates in the courtroom.

MR. PARRINO: I thought I said all
the film that was shown to him.

THE COURT: I beg your pardon.
If you included that, that is all right.

MR. PARRINO: I did.

THE COURT: All right. I didn't
want to have it mixed up. All right.

Q And in that film that was -- withdraw that.

Do you have a film here of the jaw area, Doctor, in
here somewhere? Would you pick it out, please?

A I don't think I have the jaw except in the --

Q Here it is, I think.

A This is the one we are talking about.

Q Yes. The jaw area would be --

A Oh, yes. I see what you mean. It is the same film.

Q And we are referring now to State's Exhibit 46-J again. Did

you ever see that?

A Have I ever seen this?

Q Yes.

A This is the one we handled this morning.

Q And when you saw that in your office on the morning of the 4th, you say you did examine it, of course?

A Yes.

Q And that includes the jaw area?

A Here is the jaw here.

Q Well, this picture includes that area?

A Yes.

Q And this film was dry at the time you examined it in your office, isn't that correct, on the morning of the 4th?

A Yes, I'm pretty sure that's correct.

Q Now, there are certain markings, arrows, and the like, on this exhibit, are there not, Doctor?

A Yes.

Q Now, were there any marks on this exhibit, this negative or film when you first saw it?

A No. These are my marks.

Q All of them here?

A Well, this is not my marking.

Q All the markings that are made --

A This pencil thing was my marking.

Q Pencil or pen, are those all yours, sir?

A Yes. I numbered them. I called attention to this portion. I saw this that I wondered what it might be, and, of course, this (indicating).

Q Now, in this exhibit -- and we will continue to refer to State's Exhibit 46-J until we speak of it otherwise -- you have here the picture of the vertebrae, the cervical vertebrae, do you not?

A Yes.

Q And shown here is the second cervical vertebra, is it not?

A Second cervical vertebra.

Q Vertebra?

A Singular.

Q I'm sorry. And within the second cervical vertebra and other vertebrae, there is an opening, is there not, Doctor?

A Between the two? I don't quite get that.

Q Well, what is the name of the opening in the vertebrae through which the spinal cord passes? Does it have a name?

A Yes. The spinal canal.

Q That is the only name that it has --

THE COURT: Doctor, you will have to speak a little louder. I don't believe the jury heard that.

A Spinal canal. It runs down vertically.

Q Is that the only name that it has?

A Well, I don't know what other names --

MR. CORRIGAN:

Talk a little louder.

Can you talk a little louder?

A He wants to know what the name of the canal is that runs down through the spinal column. Is that --

Q Yes.

A Well, I call it the spinal canal.

Q All right. Now, on this picture you have an arrow pointing in the region of the spinous process of the second cervical vertebra, is that correct?

A That's right.

Q And this arrow points to -- would you step down here, please?

(Witness does as requested.)

Q This arrow points to the very tip of the spinous process, is that correct?

A Well, you can be a little more specific. It is the under part and posterior part, the back part and under part.

Q As you can clearly see in this picture, the spinous process is this area that I am pointing at back in here, is it not?

A That's right.

Q And the spinous process, that is part of the vertebrae that is closest to the skin in the back, isn't that correct?

A That's right.

Q And it is that part of the vertebrae that is farthest from

the spinal cord, isn't that correct?

A Yes.

Q It extends backward and downward, as you can clearly see in this picture, isn't that correct?

A Yes, that's right.

Q Now, would you please ^{point} to the area in this picture where it is claimed that there was some fracture of the spinous process? With the back of my pen. Don't mark it up.

A This much is spinous process. The tip of the hook -- the continuity of the border was interpreted as interrupted in what we call a postero-inferior portion of the spinous process.

Q And can you see that on that film, Doctor?

A Yes. I can see it in the bright light. You can see a black line running through there.

Q Now, just point to the same area so that the jurors at this end can see it, please.

A I have to hold it. You can't see it except in bright light. I am pointing to what we call the chip in the chip fracture.

Q Point to it again, please.

A The continuity of this outside line is interrupted right through there, so that the reasoning is that you have --

Q When you say right through there, Doctor, you were pointing right --

A The black line there.

Q This area in here at that tip?

A That's right.

Q The lower tip of the spinous process, is that correct?

A That's right.

Q Take the stand, please.

(Witness resumes the stand.)

Q Now, Doctor, I presume that you have interpreted X-rays where you would find a dislocation of a vertebra, would you not?

A Yes.

Q And where you would have a dislocation of the vertebra, in many instances there might be some pressure of that vertebra up against the spinal cord, is that a fact?

A Yes.

Q And that would be classed as an extremely serious injury, isn't that correct?

A That's right.

Q Now, an injury or a fracture of the spinous process certainly would not be classed as an extremely serious injury, would it, Doctor?

A Not in itself, no.

Q Not in itself. Now, a spinous process, as it is shown here, is that portion of the vertebra to which muscles may be attached or ligaments may be attached, is that not correct?

A Yes.

Q Now, a fracture, if I understand it correctly, is a separation of the normal continuity of the bone, is that a description of it?

A Yes, that is correct, with certain modifications. I mean sometimes it isn't grossly separated.

Q It was not grossly separated in this case, was it?

A Yes. You have a black line between it.

Q Well, Doctor, did you experience some little difficulty in arriving at the conclusion that there was a fracture of the spinous process in the second cervical vertebra?

A Did I?

Q Yes.

A Well, I took a lot of time to it.

Q Well, was there some doubt in your mind, as you first looked at it, that there was a fracture there?

A Well, I presented two things: Is this a fracture or is this an artifact?

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Q Well, first tell the jury what an artifact is?

A Well, an artifact is from the same Latin stem as artificial is. It's something that -- well, it's just a happenso, in the lingo of X-ray interpretation.

Q In other words, in the taking of --

MR. CORRIGAN: Wait a minute.

He didn't finish.

A Wait. You asked me to do something.

Q You tell me when you finish, please. I'm sorry.

A So, for instance, a kidney may be taken out and maybe a week or two weeks afterwards you get a film of that area, and you'll think you saw the kidney. Well, of course, there's no kidney there. Now, that would be an artifact.

An artifact would be where something happened in the process of taking a film. For instance, maybe they will pull them out of the envelope fast and you will have streaks of lightning across, and all that sort of thing. That would be an artifact. It's something that -- well, let's, for instance, take the Mona Lisa and suppose that the man that painted it didn't want her smiling and it just happened that she was smiling, that would be an artifact. It wouldn't be something that was intended, there was no intent. It was something that was just a happenso when the thing was -- well, it could be in the Cassett, in the film, in the way the -- the direction of

the film, all that sort of -- direction of the ray and all that sort of thing. That would be called an artifact. So the question, of course, in interpretation would be: Is this something that just happened or is this a fracture?

Now, then, of course, remembering that a Roentgenologist is also a doctor and that he has to infer a lot of things, then he is interested in what we call the context of the situation. And you would have to include that in your reasoning. I guess that is as nearly as I can explain an artifact.

Q That's it. Now, summarizing all that, would it be a fair statement to say that an artifact is something that occurs in an X-ray which prevents a true picture of what might be actual injury?

A Once you have established that it is an artifact, your definition would hold.

Q An artifact, then, prevents a true reading, right, a true reading of the film? That's all it amounts to, isn't that correct?

A An established artifact.

Q Yes.

A Now, no generalities. An established artifact would prove that.

Q Well, when you first looked at this film, there was some

thought in your mind, was there not, that there might be an artifact in this film?

A That's right.

MR. GARMONE: Object to the
form --

Q How?

MR. GARMONE: Go ahead.

A Do you want to ask the question again?

MR. PARRINO: Would you please,
Norm?

(Question read by the reporter.)

A That's right.

Q Now, for how long was it that you continued to have this impression as you were looking at that film?

A Well, if you will notice, when I wrote my report on Sunday, I said -- I didn't say anything about it. I kept that -- of course, I noticed this thing and I kept it in reserve and I studied it several times, for instance, and I discussed also, for instance, with Dr. Gerber and Dr. Elkins.

Q Well, you did notice some, what you thought to be some artifact in this film as you first looked at it, did you not?

A Well, I wanted to ponder it more, if that's -- I don't know what the thought is in the back of your head, but

I wanted to ponder it more.

Q You did ponder it more, I presume?

A Yes. I looked at it and I reasoned that if it was one, it had to be recent because there was no -- it wasn't pulled away as you would expect from an old accident.

Q I see. Well, for what period of time did you believe that there was an artifact in this film?

MR. CORRIGAN: Object to that.

He didn't say he believed; he considered it.

THE COURT: Did he say that there was? He said that the question would be whether there was.

Q I will ask the question this way: For what period of time was it that this problem as to whether or not there was an artifact existed in your mind?

A Well, there must -- now, wait a minute. What is that again? Let's have that, the first part of that sentence.

(Question read by the reporter.)

A I'm going to change that and say the possibility of an artifact existed in my mind until I made out the report on 7-6. That would be 48 hours, when I said, "Lateral neck: There is a chip fracture in the inferoposterior margin of the second cervical vertebral spinous process."

Q Well, in the first report that you made --

A That's it.

Q -- to anyone as to a -- withdraw that.

You say that the first report you made was on the 6th, then, is that right?

A The first written report.

Q Yes.

A I made the report about the skull fracture immediately, 12:50 -- 12:30 July 4th I wrote it on the progress record.

Q As to the skull fracture?

A Yes.

Q Did you find a skull fracture?

A No. I wrote on there that I did not find a skull fracture, but that's what I was sent for.

Q Well, on the 4th, did you make a report anywhere saying that there was a possibility of an artifact in this film?

A Not a written report.

Q You didn't record that on the hospital chart, did you?

A No.

Q Did you record any of the findings that you made as to this film on Sam's hospital chart?

A Yes. I made the report that there was no evidence of skull fracture.

Q And is that the only entry you made?

A I wrote that at 12:30 on the 4th.

Q Now, you say that between the fifth and sixth cervical vertebrae you find some what you refer to as hypertrophic

changes?

A Hypertrophic bridging.

Q Bridging?

A There it is. (indicating)

Q I see.

A A stalactite-stalagmite formation, the one above sending down a little bonecicle and the one below sending up a little bonecicle and they meet.

Q Well, might that indicate some growth of bone in that area?

A That's what I figured, that it was probably an old football injury.

Q I see. Well, that in no way was involved with any injuries that Sam might have received on the morning of the 4th, isn't that correct?

A That's right, but it becomes important later on.

Q I see. But that arrow that you have between --

A It looked like there might be a piece of bone there. Do you see that?

Q Well, was there?

A I couldn't say that there was. I just marked it and put a question there. You have to have suspended judgments once in a while.

Q All right. Now, you later learned that there was not, did you not?

A A fracture further down?

Q Yes.

A No. As a matter of fact, I didn't learn anything about that.

Q Well, as to this arrow and question mark that you have here in the region of C-4, the fourth cervical --

A Do you see that shadow there?

Q Yes.

A Well, I didn't know -- it's possible there might have been something knocked off there. You see, here's the long bone, here's the short bone, here's the long bone again (indicating).

Q I see. Now, there were some more X-rays taken again on other days?

A Yes.

Q And when those X-rays were taken, you described that there was no fracture anywhere on the cervical vertebrae, isn't that correct?

A No. I discovered that the other X-rays did not show it. I ordered a repetition of this technique with the man on his back, the weight of his head on the table. I ordered this same technique repeated so that I could work out whether or not that was an artifact or that was a fracture. Had it occurred the second time, of course, the probability of its being an artifact would be lessened. Then if I had done it again and it happened again, then I would say it

was definitely a fracture.

Q Well, when were the next X-rays taken of the neck?

A Well, I guess they were taken 7 -- they were taken 7-6. I asked for checks, you see.

Q In other words, on this occasion you ordered a second series of X-rays taken because you wanted to be sure that what you saw in the first series was correct, isn't that right?

A Well, you wouldn't hardly have an artifact happen two successive days. That was the idea.

Q Well, sir, my question is this: You had the second series of X-rays taken because you wanted to be sure what you had seen in the first series was correct?

A That's right.

Q Yes. Now, will you look at these, please -- and let's keep these apart so we don't confuse them -- now, which of these was taken on the second series and what is the order in which they were taken, if you can tell me?

A Let's count these the first.

Q Yes, those are all the first. I think these are all the second.

A This is the second. And it showed, instead of the black streak, it shows a white streak across there, which starts way down below and goes way up over.

Q Is this in the region of the second cervical?

A That is, right across that black mark. So --

Q Before we get to that, in other words, on this second X-ray that was taken, there was an artifact in this film, is that correct?

A That's right.

Q So --

A In that portion of the film.

Q When was this taken, by the way?

A This was taken on the 6th.

Q Was this --

A See, we had a holiday; Sunday and then we had a holiday Monday.

Q I see here that this is dated 7 -- July 7, 1954, is that correct?

A No.

Q Well, would you read that, please, in typing?

A Yes. It says that on there, but it was corrected above.

Q And then typed here we have "date" and in type we have July -- or, 7-7-54, isn't that correct?

A Yes.

Q And that's crossed out, is that correct?

A Yes.

Q And then above it you have another date?

A 7-6.

Q Now, who changed the date on this X-ray film?

A Probably Kerner, the man who took the film.

Q Well, do you know, Doctor?

A I know I didn't do it, and I know the report is given as dictated -- yes, the girl copied it that way.

Q Well, the fact of the matter is, Doctor, you don't know who it was, of your own knowledge, that changed the date on this film, referring to State's Exhibit No. 46, isn't that right?

A Yes, that's right. I don't know who changed it. Is it changed consistently?

Q Yes. I don't know if it is.

A Yes, there's a white -- Kerner always used a white pencil, so it would be --

the 9 Q All right. What is this information that is contained in
me this area here? What is that called?

A We call that a plate.

Q And who puts the plate in the position that it is here?

A When the film is taken, there is lead on the film which leaves you an unused portion of the film here. Then we have a machine, and that goes in, and a light is thrown on it so that the plate is recorded on the film, and the technician takes it automatically.

Q Shall we look at that plate together, Doctor, and we see here on this plate "Bay View Hospital," is that right?

A That's right.

Q "Name: Sheppard, Dr. Sam, 7-6-54, X-ray No. 54-5506. Date: 7-7-54," with a line through it, is that right?

A Yes, that's right.

Q And then you have "Referred by," is that right?

A Yes.

Q "Referred by R. N. S." Would that be Richard N. Sheppard?

A Yes. And then this, too.

Q And "SAS." Would that be Stephen Sheppard, Stephen A. Sheppard?

A Yes.

Q And then you have "R.A.S.," and that would be Richard A. Sheppard, right?

A Yes.

Q So apparently this was referred to whoever took these pictures by all three of these doctors, isn't that right? Isn't that right?

A Well, that's right, as far as that printing goes, but --

Q Now, it also says here, "Age: 30. Height" -- what is that -- "6-1 or 6-5"?

A 6 feet.

Q Six feet. "Weight: 180"?

A That's right.

Q So then after you examined State's Exhibit 46, you discovered an artifact in it. What did you do then?

A I told them to clean his neck with alcohol and to take the film without the collar.

Q Now, who did you tell that to?

A I told that to Kerner.

Q Apparently, then, this second X-ray was taken as Dr. Sam had his orthopedic collar on, is that right?

A Yes.

Q Now, you asked him to wash his neck, did you not?

A Well, cleaning it off with alcohol.

Q Or to clean it off with alcohol. Now, was the reason for that that there might be some salve on the neck that might interfere with the X-ray?

A Well, yes. That was to make sure that he had a neutral neck, if you want to --

Q Well, exactly, then, why was it? Will you tell the jury, please? We may not understand these things as to why it was that you gave the instructions to have this technician wash Sam's neck before this third X-ray of the neck was taken.

A Because I wanted to have proof that there would be no artifacts on the second -- on this film. This would be the third film.

Q And if there were something on the neck it is possible that that might produce an artifact, isn't that right?

A Possible, yes.

Q Now, thereafter, then, a third X-ray was taken of the neck. Do we have that here?

A Well, I don't know.

Q I think these are all we have here. Look them over, please.

A This must be it. It is written on. This we don't want (indicating).

Q Well, keep them all here. These are separate from those others.

A Yes. This is the third one. "Collar off and neck cleansed with alcohol. Patient erect. 72 inches."

MR. DANACEAU: May we have the
exhibit number, please?

MR. PARRINO: Yes, we are going to

come to that.

Q Now, we are referring to State's Exhibit 46-K, is that right, Doctor?

A Yes.

Q 46-K.

A That's right.

Q And the film with the artifact in it that was taken on the second occasion would be 46-I?

A I.

Q Okay?

A Yes.

Q Now, on this film, 46-K, do you see any artifact in this film?

A No, I don't.

Q You don't?

A No.

Q Now, in this film -- withdraw that.

This is a film of the same area that we have in --
I want to withdraw that.

Referring to State's Exhibit 46-K, 46-K is the same area as 46-I, is it not?

A What do you mean 46-K? Is that the No. 1 film or No. 2 film?

Q Well, they show the same region of the neck, the cervical area of the neck, do they not?

A Oh, yes, yes.

Q And in 46-K, the last picture that was taken, do you see any fracture of the spinous process of the second cervical vertebra?

A No, I don't.

Q Now, in other words, Doctor, the results of the X-rays -- the third X-ray film that you examined, and that was taken on the 6th, did not show a fracture of the spinous process that you interpreted in the X-ray film of the neck taken on the 4th, isn't that right?

A That's right, but what you are forgetting is that I ordered --

Q Doctor, I am not forgetting anything, sir.

A Well, I know. That makes it worse, as far as I can see.

Q Now, do you want to add something to your answer, sir?

A Yes, I want to add something to my answer.

Q Add as much as you wish.

A You take a fracture where you find it, when you find it, and lots of times they are very difficult to demonstrate. The first technique was with the man on his back at 36-inch distance. The second was 72-inch distance. Sure it didn't show it, but it didn't prove that it wasn't on the first at 36 inches.

MR. PARRINO: Your Honor, I don't

think that I will be much longer, but as I understand

it, some jurors may want to get away at this time. We can adjourn now, and if there are any further questions, we can ask them after the noon hour.

THE COURT:

Thank you.

Ladies and gentlemen of the jury, due to the fact that a number of our good citizens have special obligations on this day and want to observe them, we certainly do want them to observe them, we have agreed that we will adjourn for the noon hour at this time and adjourn until 1:30, or as near to it as we can all get back here, so we will adjourn at this moment without any formality at all.

In the meantime, please do not discuss this case at all, and we will reconvene as soon as we are all here at 1:30 or thereabouts.

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(Thereupon at 11:45 o'clock a.m. an adjournment was taken to 1:30 o'clock p.m., Wednesday, December 8, 1954, at which time the following proceedings were had):

Wednesday Afternoon Session, December 8, 1954.

(1:30 o'clock p.m.)

(Thereupon DR. GERVASE C. FLICK resumed the stand.)

MR. CORRIGAN: If the Court please, I have a lady here who is a very short witness, and she is working --

THE COURT: She is what?

MR. CORRIGAN: I have a lady here who is a very short witness, and she is working and she came away from work, and I sould like to put her on. It will only take a few minutes.

THE COURT: I presume the prosecution --

MR. MAHON: It's all right.

MR. PARRINO: Yes, that will be all right.

Would you step down, Doctor, please?

(Witness temporarily excused.)

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Thereupon, further to maintain the issues on his part to be maintained, called as a witness BELLE BROWN, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF BELLE BROWN

By Mr. Corrigan:

Q Will you state your name?

A Belle Brown.

Q And are you married or single?

A I'm single.

Q And are you a widow?

A I'm a widow, yes, sir.

Q What was your husband's name?

A Roy M. Brown.

Q And where do you live, Mrs. Brown?

A 12031 Edgewater Drive.

Q And you are at the present time employed?

A At the Higbee Company.

Q And came here from work?

A That's right.

Q And want to go back to work?

A That's right.

Q Do you know Sam Sheppard?

A I do.

Q And when did you first become acquainted with him?

A When they bought our house in 1951.

Q And you were the former owners of that house that he now occupies?

A That's right.

Q Or did occupy. In relation to the carpet that is on the floor of that house, when was it placed there, Mrs. Brown?

A In 1943.

Q And when you sold the house, you sold it with the carpet?

A Yes, sir.

Q And you and your family lived there from 1943 until 1950?

A '51; eight years.

Q Yes. During the time that you lived there, did your husband have an accident?

A He did.

Q And what was the accident?

THE COURT: Did he have a what?

Pardon me. Did he have a what?

MR. CORRIGAN: An accident.

THE COURT: Oh, yes.

Q What was the accident?

MR. PARRINO: I object to this,
your Honor.

THE COURT: Well, she can state
the nature of it.

- A He fell on the beach wall and cut his shin.
- Q And did his foot bleed?
- A Very badly.
- Q And after that, did he come into the house?
- A He did.
- Q And will you tell which way he came into the house?
- A He came through the breakfast room. I think they refer to it as the den, and he came through the kitchen and into the living room.
- Q And into the living room?
- A And sat down in his chair there in the living room.
- Q And his foot was bleeding?
- A Very badly.

MR. CORRIGAN:

Cross-examine.

CROSS-EXAMINATION OF BELLE BROWN

By Mr. Danaceau:

- Q Was that carpet ever cleaned from 1943 on?
- A No, sir. Vacuumed all the time, but never scrubbed or cleaned.
- Q How badly -- you say his shin was bruised?
- A Yes. Cut very deep. It required clamps. He went to the doctor and had it clamped.
- Q When was this injury? When did this injury take place?
- A Well, I think it was about two years before we moved.

About '48 or '49.

Q Well, when he came into the house, where was the first place he went?

A He came through the breakfast room door into the kitchen and into the living room.

Q And from the living room, where did he go?

A Sat down in his chair just inside the door.

Q Was there any bandage put to it at all?

A No. He went right to the doctor.

Q How long was he in the living room?

A Well, he just sat down in the chair a few minutes and put his foot up. He thought a bandaid would take care of it.

I said, "Certainly not," he would have to go to the doctor. And my son took him to the doctor right away.

Q Did this bleeding occur -- did you see any blood on the rug?

A No blood -- I wiped up no blood, but it was bleeding very badly in his shoe and his stocking, and on his trousers, there, too.

Q But no blood on the rug?

A I don't remember wiping up any blood on the rug.

Q You don't remember seeing any blood on the rug?

A I couldn't say. I don't remember.

Q How about the kitchen, any blood in the kitchen?

- A I don't remember. I didn't wipe up any.
- Q So as far as you know, there was no blood on the floors anywhere?
- A Well, I don't know. I couldn't prove that.
- Q There was no rug on the kitchen floor, was there?
- A No. We had a linoleum.

MR. DANACEAU: That's all.

MR. CORRIGAN: That's all.

THE WITNESS: Thank you.

MR. CORRIGAN: Oh, just one
other question.

REDIRECT EXAMINATION OF BELLE BROWN

By Mr. Corrigan:

- Q Did the police ever come to see you or make any inquiry of you?
- A Since this has happened?
- Q Yes.
- A No, sir.

MR. CORRIGAN: All right. That
is all.

THE WITNESS: Is that all?

MR. DANACEAU: Yes, that's all.

MR. PARRINO: Thank you very much.

(Witness excused.)

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Thereupon GERVASE CHARLES FLICK resumed
the stand and was examined and testified further,
as follows:

CROSS EXAMINATION (CONTINUED)

By Mr. Parrino:

Q Now, on the 6th, at the time the second film was taken of
Dr. Sam's neck, was that from a lying position or from a
standing position that that film was taken?

A Sitting, I think.

Q Does it so state in your report, Doctor?

A I think it is written on the films. I think it is written
on the films. Oh, the second time -- the one with the
white streak?

Q Yes.

A "Patient's neck cleaned with a " -- oh, no. Second 72-inch
film of the lateral neck. "Patient erect." That may have
been standing, I don't know.

Q So he was standing?

A Yeah.

Q As to the third film, was he lying, sitting or standing,
do you know?

A Well, as a matter of fact, the one I just read to you was
the third film.

Q Well, how about the second one?

A The second film, "Lateral neck, patient erect, coned down at 72-inch distance. There is evident a white streaking through the film which detracts from its value. This film does not show findings interpreted on the previous film as a chip fracture of the spinous process of C-2."

Q Well, Doctor, my question is: Was he standing, sitting or lying down?

A It says "Patient erect."

Q How was he? Don't your records show other than "Patient erect"? What does that mean?

A It means that his trunk was vertical.

Q And it doesn't say then if he is sitting or standing?

A No, it doesn't say.

Q As to the second X-ray of his neck, at what distance was that X-ray taken?

A That is after he was cleansed with alcohol?

Q The second picture was taken -- well, let's put it this way:

The first picture that was taken on the 6th.

A The first picture that was taken on the 6th?

Q Yes.

A Was 72 inches, patient erect.

Q As to the second picture taken on the 6th, what was the distance?

A Second, 72 inches. Film on the lateral neck. Patient erect.

Q Now, referring to the picture taken on the 4th, was the patient, according to your records, lying, sitting or standing when that was taken?

A He was supine.

Q Where does that say that on your report?

A No, it doesn't say.

Q It doesn't say, does it?

A No.

Q Does the report on the 4th as to the picture that was taken on the 4th, does that report tell you the distance at which that picture was taken of the neck?

A No, I don't think it does.

Q Do you know at what distance the picture of the neck was taken?

A Yes.

Q At what distance?

A 36 inches.

Q Now, you say that the pictures that were taken on the 6th were both taken at 72 inches, right?

A That's right, yes. That's right.

Q Now, is there any technical reason why you did not have the pictures on the 6th taken at 36 inches again, please?

A Yes. They ignored my -- Huge didn't take the second picture. Dr. Kerner -- or Mr. Kerner took the second picture and took it at 72 inches.

Q Now, we are referring now to the first X-ray or the first picture of the 6th, aren't we?

A Yes.

Q Did you give instructions that that picture was to be taken at any specific distance?

A Yes. I asked for it at 36 inches. I didn't write them. As a matter of fact, I thought until I measured them -- when Dr. Gerber came in and Dr. Elkins measured them and saw that they were smaller, and then I knew that they hadn't taken them the way I wanted them.

Q So then, as to the first pictures that were taken on the 6th, you gave instructions for those pictures to be taken at 36 inches, is that right?

A Yes.

Q And that wasn't done?

A That's right.

Q Now, then, after you found that there was some artifact or defect in those first pictures of the 6th, you wanted another set of pictures taken, right?

A Yes.

Q Of the neck?

A Yes.

Q And did you again give instructions that those pictures were to be taken at 36 inches?

A No. I assumed that the first one was taken at 36 inches.

Q So then we have -- you have no pictures in your possession that were taken at the same distance that the first pictures were taken, is that right?

A That's right. The first ones were taken at 36 inches.

Q Now, to summarize your findings as to those pictures, Doctor, would you state to me whether or not this is a correct summary of what you found --

MR. CORRIGAN: I object.

THE COURT: Oh, let him summarize it.

Q As to the pictures, or as to the picture of the neck that was taken on the 4th, there was what you thought might perhaps be a fracture of the spinous process in the second cervical vertebra; as to the first picture that was taken on the 6th, there was an artifact, so you could not accurately read that picture --

A Because --

Q Just a moment. As to the third picture that was taken on the 6th --

MR. MAHON: Second on the 6th.

Q As to the second picture that was taken on the 6th, you found no evidence of fracture any place on the neck, isn't that right?

A That's right.

MR. PARRINO: You may inquire.

REDIRECT EXAMINATION OF GERVASE CHARLES FLICK

By Mr. Corrigan:

Q Dr. Flick, in the first picture that was taken on the 4th of July, that was taken by a technician named Mrs. Huge?

A That's right.

Q The distance was 36 inches?

A That's right.

Q And Dr. Sam was lying down?

A He was supine.

Q And when you examined that film, after you pondered over it and examined it, you found a chip fracture, didn't you?

A That's what I -- that was my conclusion and that's the way I wrote it.

Q And that shows on the film?

A Yes.

Q You also found, did you not, between the fifth and sixth cervical vertebrae some evidence of bony deposits that showed on that film of July the 4th?

A Yes. What I call -- I think I called it bridging.

Q Bridging. Now, you tell the jury what that is, so they will understand what that was on the 5th and 6th cervical vertebrae.

A Well, the borders of the bodies start shooting out little bony spikes. The sixth shot its spike out and up. The

fifth shot its spike out and down, so that there was practically bridging. That's what we call bridging. They go out and up.

Q That was a building of bony deposits?

A That's what is called an osteophyte, and an osteo means bone and phyte means a plant, an excrescent.

Q And that takes some time to develop, doesn't it?

A Oh, yes.

Q Is that what causes arthritis?

A Well, it is a manifestation of the groundwork of an arthritis.

Q And you found that present in this film of July the 4th?

A That's right.

Q And you determined that that was the result of something that occurred a long time ago?

A Well, frankly, it isn't -- I thought he got it hurt playing football.

Q Now, then, when the second films were taken on the 6th of July, it was a different technician, wasn't it?

A Different technician and different technique.

Q On those particular films, the films were taken with the body erect --

A Trunk erect, at least.

Q And the distance was 72 inches?

A That's right.

Q Now, in examining those films of July the 6th, the two films that were taken on July the 6th, do you find any evidence on those films of the bony deposit that you found on the film of July the 4th?

A No, none at all.

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Q Now, then, does it occur in the taking of X-rays that you will get one result from one sort of technique and another result from another technique?

A It certainly does.

Q And can you explain that to the jury, and have you had experience in that occurrence, in occurrences of that kind?

A Yes, I have.

Q Will you tell the jury?

A Well, as I said this morning, you take your fractures where you find them because very often you have what you call hidden fractures. I have in mind the one I took the day before yesterday. I took a child's leg. On the first film it didn't show at all; on the second film it showed a fracture.

Q Yes. Now, although the film did not show a fracture in the first instance, the child still had a broken leg, didn't it?

A Yes.

Q Now, then, you were asked the question by Mr. Parrino in regard to the fracture that appeared on the spinous process, and he stated, "That that of itself is not serious, is it, Doctor?"

And your answer was, "No."

Do you have anything to add to that?

A Well, I did, I think, at that time. The thing of itself is just a piece of bone knocked off of there, but the position of that chip would mean that the blow had to hit it at right angles, and you don't know how much jar there might be to a nerve or to the spinal cord; and, of course, that's only speculation for me, but it had to be a pretty violent blow hit from a certain direction.

MR. PARRINO: If the Court please, let's not have the doctor speculate on these things.

THE COURT: Yes.

Q But you do know this, Doctor: That in order to chip a bone or a piece of bone off the spinal column, it requires force?

A Yes.

Q And what type of force?

A Well, mechanical force.

Q Of what type of -- how heavy a blow?

A Well, a pretty heavy blow, I would think.

MR. CORRIGAN: That is all.

RECROSS-EXAMINATION OF DR. GERVASE C. FLICK

By Mr. Parrino:

Q But, Doctor, after this third -- withdraw that.

After the second picture was taken on the 6th from

a distance of 72 inches, and you found that there was no evidence of any fracture on the neck, you did not order another picture of that neck taken from a distance of 36 inches, did you?

A No, I did not at that time, as I told you before.

Q Now, Doctor, referring to this hospital record, on Page 25, is this your report, sir?

A That's my writing.

Q Now, when was this report made? What is this date up here, please? What does that represent?

A 7-7.

Q And is that the date on which this report was made?

A The date 7-7 should read 7-6.

Q Well, on what date was this report made, then?

A Well, this is it, it was made on the 7th -- it was made on the -- it apparently was made on the 8th, but it should read up here 7-6. This means the films were taken on the 6th, which would be Tuesday.

Q Yes.

A But the report was made on the 8th, which was Wednesday. That is, that's when the girl put it down.

Q But on the 6th -- withdraw that.

It was on the 6th, was it not, that you knew that the second and third pictures were taken from a distance of 72 inches, isn't that correct?

MR. CORRIGAN: I object. That has been gone over about a dozen times.

MR. DANACEAU: Not that specific question hasn't been.

THE COURT: Let him clear it up. There is so much of it that it is rather confusing.

A Say that again.

Q What?

A Say that again.

Q It was on the 6th after the second and third pictures were taken that you knew that those pictures were taken at a distance of 72 inches, isn't that correct?

A Let's see. Let me see that.

Well, I don't know. I found it out when I was conferring with Dr. Gerber and Dr. Elkins, because I noticed that when we put them all up there together, the one was smaller, and I measured them in front of them and saw that this was --

Q Doesn't your report here of the 8th specifically state:

"Lateral neck: Patient erect, come-down at --"

A Cone.

Q Comb?

A Cone; put a small spot on it.

Q Well, there's a letter missing from that word, then?

A Oh, yes, that's an "m" instead of a "n".

Q It's "cone-down at 72 inches"?

A Yes.

Q Well, you knew at that time, did you not, that the pictures were taken at 72 inches on the date that this report was made, July 8th, 1954?

A Yes. I wrote it on the 8th.

Q Yes. On what date did you make this entry here, "the date 7-7-54 should read 7-6-54, G.C. Flick, D.O."? What date did you write that?

A I wrote that on the 8th.

Q All right. So that on the 8th you did read this report and determined that the date up here was wrong, so you corrected it?

A Yes.

Q And then in reading the report, you knew that those X-rays of the 6th were taken at a distance of 72 inches?

A Yes, and I knew it on the 8th.

Q Yes, that's right.

A I knew it on the 8th.

Q All right.

MR. PARRINO:

That is all.

MR. DANACEAU:

Wait a minute, Tom.

MR. PARRINO:

That is all,

Doctor.

MR. CORRIGAN:

That is all.

Thank you, Doctor.

THE COURT:

Thank you,

Doctor.

(Witness excused.)

MR. GARMONE:

Call Mr. Benjamin.

- - - -

Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness KENNETH H. BENJAMIN, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF KENNETH H. BENJAMIN

By Mr. Garmone:

Q Will you state your name, please?

A Kenneth H. Benjamin.

Q Where do you live?

A In East Cleveland.

Q What address?

A 1500.

Q 1500 what street?

A 1500 Coventry Road, East Cleveland.

Q Are you married?

A Yes.

Q Do you have a family?

A Yes.

Q How many children?

A Two children.

Q How old are you, Mr. Benjamin?

A I'm 32 years old.

Q Did you know Marilyn Sheppard during her lifetime?

A Yes, sir.

Q And where did you first meet her?

A I first met her in junior high school.

Q And what junior high school was that?

A Roosevelt Junior High.

Q And was she in the same classes with you in school?

A Yes, sir.

Q Now, Mr. Benjamin, did you have the occasion to see Marilyn Sheppard a week or two prior to the 4th day of July?

A Yes, sir.

Q Will you tell the jury where that meeting took place?

A We were on the same bus riding out of the Municipal Parking Lot.

Q And where did she board the bus, if you recall?

A I don't recall where she boarded the bus.

Q Where did you board the bus?

A I boarded the bus on 9th Street near Vincent.

Q Was it a loop bus?

A Yes, sir.

Q Did you have some conversation with her at that time?

A Yes, I did.

Q About how long would you say that you and Marilyn were in company on that bus ride?

A Oh, I'd say about 10 minutes.

Q During the course of the conversation, did you have an occasion to observe what her attitude was?

A Yes, I did.

Q Will you tell the Court and jury what your observation revealed?

A She seemed extremely cheerful, happy, and she more or less discussed what --

MR. MAHON: Wait a minute,
now. About any discussion, I'm objecting to
that.

Q Did you have some conversation with her after you made the observation?

A Yes.

Q Will you state to the Court and jury what that conversation consisted of?

MR. MAHON: Objection.

THE COURT: Oh, I think the
objection will be sustained.

MR. GARMONE: That is all.
Thank you. You may have the witness.

THE COURT: Sir?

MR. GARMONE: I am through
with the witness.

MR. DANACEAU: No questions.

MR. MAHON: No questions.

(Witness excused.)

MR. GARMONE:

Will you call in

Mr. Mickey?

- - - -

Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness ROBERT JAMES MICKEY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF ROBERT JAMES MICKEY

By Mr. Garmone:

Q Will you state your name to the Court, please, and jury?

A Robert James Mickey.

MR. MAHON: Mickey?

Q Where do you live?

THE COURT: Mickey?

MR. MAHON: Mickey, is that it?

THE WITNESS: That's right.

Q Where do you live?

A 6482 Westminster Drive, Parma.

Q Are you married?

A Yes.

Q Do you have a family?

A Yes.

Q How many children?

A Four.

Q Congratulations to you.

A Thank you.

Q What is your business, Mr. Mickey?

A We're landscapers.

Q When you say, "We're landscapers," who do you mean?

A My brother and I.

Q How long have you been engaged in that business?

A Oh, about two and a half years.

Q In the course of your business operations, were you thrown or brought into contact with Marilyn and Sam Sheppard?

A We were.

Q And when was the first time that you and your brother had contact with Marilyn and Sam?

A Oh, about last fall.

Q Was there some discussion there between yourself, Sam and Marilyn?

A Well, we were to do their yard maintenance, and we had discussed about putting in foundation planning in front of their home and improving the grounds in general.

Q Now, sometime in June of 1954, did you again meet with Marilyn and Sam Sheppard?

A Yes. That was the latter part of June.

Q And where did that meeting take place?

A At their home.

Q During that meeting, did you have conversation with Sam and Marilyn?

A Yes, we did.

- Q Will you state to the Court and jury what that conversation consisted of?
- A Well, we discussed about putting in the foundation plannings, had drawn up the plan and submitted it to Marilyn, and we discussed the plant material to go into the job, and Sam said he would let it in Marilyn's hands, go ahead with the job. We were supposed to put it in this fall.
- Q And did Sam say to you at any time that the arrangements from that point on should be taken up with Marilyn?
- A Yes. It was final with her.
- Q Now, when did you next see Sam, Mr. Mickey?
- A Oh, that was about July 1st.
- Q Where did you see him on that occasion?
- A Bay View Hospital.
- Q Did you have some conversation with him then?
- A Yes, we did.
- Q What was the conversation about?
- A Well, it was -- at the time Dr. Richard, Jr. was at the hospital and he had come up. Sam and he were supposed to go to the swimming pool, and Dr. Sam was outside looking over his charts, and we took him down back of the hospital and showed him a retaining wall that we had put up and --
- Q Who had you put that retaining wall up for?
- A Pardon?
- Q Who had you put that retaining wall up for?

A For the hospital.

Q For the hospital. And you took him down and showed him the retaining wall?

A That's right.

Q Now, did you sometime later have an occasion to see Dr. Sam Sheppard?

A That was July 3rd.

Q And where did you see him on that occasion?

A Dr. R. A., Sr.'s home.

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mg

Q Did you see him after the 3rd of July?

A Yes. That was the first day he was released from the hospital.

Q And where did you see him?

A Dr. R. A. Senior's.

Q Were you doing some work for Dr. R. A. Sheppard?

A We were.

Q Senior?

A Yes.

Q What kind of work were you doing?

A Removal of the apple trees in the front yard and pruning out of the trees, in general.

Q Now, on that occasion, Mr. Mickey, did you have a conversation with Dr. Sam Sheppard?

A I did.

Q Will you state to the Court and jury what that conversation was about?

A Well, Dr. Sam sat parallel of us where we were working on the tree, and he asked us if we could use another good man, and in turn we jokingly said, "Yes, do you know where we could find one?"

Q Was there anything else said there at that time by yourself to Dr. Sam Sheppard?

A Well, we drove back and forth, and he went up to the house

and he had some medical charts, and then he and his father stood on the front porch and they looked them over, and as he was coming back down again, he stopped where all of us were again and we told him, "You better move this sports car out or we will drop the tree in it."

Q Any other conversation?

A No.

Q Did Sam say anything to you at that time?

A No, he didn't say anything other than in a joking mood.

MR. GARMONE: That is all. You
may inquire.

MR. PARRINO: No questions.
(Witness excused.)

- - -

Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness JACK JOSEPH BRILL, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan;

Q Will you state your name to the Court and jury?

A Jack Joseph Brill.

Q What is your business or profession?

A Osteopathic physician.

Q And where do you practice medicine, Doctor?

A In Amhurst, Ohio.

Q Where were you born?

A Philadelphia, Pennsylvania.

Q And where did you go to school?

A Philadelphia College of Osteopathy.

Q After you finished your schooling did you come to this community?

A Yes.

Q And when did you come here?

A In July of 1953.

Q And did you associate yourself with someone here in the practice of medicine?

A No. I went into an internship at Bay View Hospital.

Q What does that mean, that you went into an internship at Bay View Hospital?

A It meant that I went into physician's training at the hospital for a period of a year.

Q And did you remain there for a year?

A Yes, sir.

Q In training?

A In training.

Q And then started in practice for yourself?

A Yes.

Q In Amhurst, Ohio?

A Yes, sir.

Q When did you start practicing in Amhurst, Ohio?

A Shortly after Labor Day this year.

Q Were you at the hospital on the 4th of July of this year?

A Yes, sir.

Q Do you know Sam Sheppard?

A Yes, sir.

Q During the year that you were in training at Bay View Hospital did you come in contact with him?

A Yes, sir.

Q Frequently or infrequently?

A Frequently.

Q And did those contacts that you made with him during that year in the hospital cause you to form an opinion as to the

type of a man he was?

A Yes, sir.

Q Will you tell the jury what opinion you formed?

A Yes. I'd really ought to say that in my opinion -- and I'd also like to preface it by saying I feel -- I am a little older than Dr. Samuel Sheppard, I am 32, and I have met a lot of people in the course of my training and Army service, and I can say under oath that I have never met anyone that I respected more for his ability and for his integrity and honesty in treating people and patients. I can truthfully say that.

Q And how about his temperament?

A Ideal.

Q Now, then, on the 4th of July -- in the morning of the 4th of July, did you hear of the tragedy that took place at his home?

A Yes, sir, I did.

Q Did you know Marilyn Sheppard?

A I had met her. I didn't know her well.

Q You did not know her socially?

A No, sir.

Q Let me go back a moment to the day before the 4th of July. Did you have any conversation with Sam Sheppard as to going to his home on the 4th of July?

A Yes, sir.

Q What was it?

A We planned on going to the 4th of July party which Dr. Sam Sheppard was planning to give.

Q Who invited you?

A Dr. Sam.

Q And what time on the 3rd of July were you invited to that party?

A Well, we had been invited several times, as I recollect, and the last time was July the 3rd. I remember rather distinctly being invited that time because I was showing another student through the hospital who planned on interning at our hospital, and we walked into the operating room where Dr. Sam was scrubbing before surgery. I introduced this young fellow, who was from California, and I thought perhaps Dr. Sam might know him as a student, and he didn't, he didn't know the student, but he invited the student, also. That is why I remember rather clearly that he said, "If you are in the area, be sure and come out the following day because we are going to have open house."

Q Do you recall on the 3rd of July an accident that -- were you in the hospital on the 3rd of July, that would be Saturday, when there was an accident case came in that was attended to by Dr. Sam Sheppard?

A Yes, sir.

Q What time was that? Was it morning or afternoon?

A I think it was around noon, or later -- I think it was early afternoon. I'm not too sure of the time.

Q And what type of an accident was it?

A A child was involved, and if I remember correctly, the child had been struck in a driveway. I'm not too sure about that, but I know the child was either near death or at death, and he was worked upon by Dr. Sam. That I know. I wasn't in attendance. I heard of it in the hospital.

Q Oh, you just heard of it. All right.

Now, then, on the 4th of July how did the information come to you that this tragedy had occurred at Dr. Sheppard's home?

A I heard about the tragedy through one of the other doctors in the hospital, in the corridor, actually.

Q Did you make a telephone call?

A Did I make one?

Q Yes.

A No, sir.

Q You did not?

A Oh, oh, you mean before -- when I was called?

Q Yes.

A Yes. I made a telephone call out to Dr. Sam's house.

Q And when you telephoned to Dr. Sam's house, can you tell the jury who answered the telephone?

A A woman answered, and she told me she was Mrs. Houk, and the

purpose of my call was to inquire as to whether or not we could bring anything out to the house to help, in the way of equipment, we had received an emergency call, and she hesitated some and said that she had better call Dr. Richard, and I spoke to Dr. Richard.

Q And did you talk to Dr. Richard Sheppard then over the telephone?

A Yes.

Q And as a result of that conversation, did you go to the house?

A No, sir, I didn't go to the house.

Q What was the conversation with Richard?

A I asked Dr. Richard if there was anything we could bring out to help, and he said no.

And I asked him if he wanted me to come out and he said no, there wouldn't be any need to, Dr. Sam was on his way in.

Q Now, after that, did you see Dr. Sam Sheppard?

A Yes, sir.

Q And where was he when you first saw him?

A In the station wagon.

Q And did you have anything to do then with Dr. Sam Sheppard after you saw him arrive in the station wagon?

A Yes.

Q Will you tell the jury what you did at that particular point?

A I helped to get Dr. Sam on the stretcher that we had waiting, and we took him to his room and placed him in the bed.

Q Now, when you say you helped to get Dr. Sam Sheppard on the stretcher, did you at that time notice the physical condition or make a note of his physical condition of Dr. Sam Sheppard?

A Yes. I made a mental note.

Q And what was the note that you made, the mental note?

A Well, I thought that Dr. Sam was physically injured, and that he was stiff and sore and wasn't able to move freely.

Q Was that indicated to you in any way as a doctor?

A Sir?

Q Was there anything about him that indicated those things to you?

A Well, as far as I am concerned, we had to move him. He didn't move freely. We moved him onto the stretcher.

Q And after you moved him onto the stretcher, where did you take him?

A To his room.

Q And did you go into the room?

A Yes, sir.

Q And did you do anything in the room?

A Yes. We undressed Dr. Sheppard and put ice -- or put hot

water packs to him and covered him with blankets.

Q Now, were there other people helping to undress him?

A Yes, sir.

Q Now, when you helped to undress him, did you make any observation at that time as to his body and the condition of his body?

A Well, his face was bruised. He, to me, had a great deal of neck pain. He continually held the back of his neck and complained of pain, and his body, to me, was soaked, it was water soaked, and we took his trousers off and his shoes, and to me, his legs -- his feet were puckered, they were water soaked.

Q They were puckered, like as though they had been in water a long time?

A As though he had been in water for some time.

Q One witness described it as shriveled.

A Well, shriveled.

Q Would that be an apt description?

A Yes.

Q And did you hear him say anything or do anything at all?

A Well, for one thing, he complained of neck pain, and quite honestly, at this time I am sure I heard him say some things, but so much has gone through my own thinking, and so much that I have read, that I really hesitate to say just what it was. He complained about the tragedy, I know that, but

what words he used, I hesitate to say.

Q Did you make an observation as to his mental condition at that time?

A I think Dr. Sam was confused.

Q He was confused?

A I think so.

Q Now, after you had had him undressed and put these hot water bottles about him, did you make any other -- did you do anything else?

A Well, shortly after that, not too long after that, we took him to X-ray.

Q Now, while he was in X-ray, did you remain in there all the time?

A I was in and out.

Q In and out?

A Yes, sir.

Q Was there a time when -- do you remember the X-ray technician that was working that morning?

A Yes, sir.

Q What was her name?

A Mrs. Huge.

Q During that period while he was in X-ray did Mrs. Huge come to you and ask you for some directions?

A I was in the room at the time. She asked me if Dr. Sam could be moved so that she could get all the shots, and

at the time I didn't think it would be best for him to be moved.

Q Well, I want to direct your attention to a complaint of numbness in the fingers. Did you hear that?

A Yes, sir. He repeated that over and over again.

Q What?

A He repeated that over and over again that he felt this numbness down in his arm and fingers.

Q And when the complaint of numbness was on the fingers, or complaint made of numbness in the fingers, was there any instructions that you made at that time about taking pictures?

A Only the one I mentioned before. I didn't think that he should be moved about to complete all of the series, the skull series, which involves a number of films.

MR. CORRIGAN: I think that is all.

You may cross-examine.

CROSS EXAMINATION OF JACK JOSEPH BRILL

By Mr. Danaceau:

Q Doctor, did you live at the hospital the early part of July? Did you live --

A No, I didn't live at the hospital. I was on duty that night. I was living there that night.

Q You were living there the early morning of July the 4th?

A Yes, sir, July 3rd and 4th.

Q It is Dr. Carver and Dr. Dozier who were at the hospital that same night, is that correct?

A Yes, sir.

Q Did you transmit a telephone call to Dr. Dozier?

A Yes, sir.

Q And what time did you get that call?

A I don't know.

Q From whom did you get that call?

A The switchboard operator.

Q Do you have any record anywhere at the hospital when that call came in, that you know of?

A That I know of?

Q Yes.

A No.

Q Did you make a note at any time of what time that call came in?

A Well, may I explain this: I was first up on call, first on call that night, July the 3rd and the morning of the 4th, and that entails being ready for any emergency. If we lay down at all, we are clothed, fully clothed, and we are right next to the phone, and we get emergencies all night or any time during the night.

At that time I was sleeping, and the phone rang, and I got this emergency call. I haven't any idea what time

it was.

Q Did you answer the telephone?

A Yes, sir.

Q Who was on the telephone?

A The switchboard operator.

Q Your switchboard operator?

A Yes, sir, as far as I know. I'm sure it was.

Q Well, then, you didn't receive in person the call from the outside, did you?

A No, sir.

Q Well, how much before this telephone conversation you had with Dr. Sheppard did this call come in, how long a period of time?

A A matter of minutes.

Q A matter of minutes?

A Yes, sir.

Q How many minutes?

A Well, as long as it took me to run upstairs, which is one flight, and arouse the others, and they had to dress, and they were getting dressed -- they jumped right out of bed and dressed, and while I was waiting for that, I thought it best to call Dr. Richard and see if there was anything I could bring out.

Q So your telephone conversation with Dr. Richard was while Dr. Carver and Dr. Dozier were still at the hospital, before

they left?

A Yes, sir.

Q And how long did your conversation with Dr. Richard last?

A Not very long.

Q Now, I believe in response to a question you were asked, when you talked to Dr. Richard, he said to you Dr. Sam was on his way into the hospital, is that correct? Did you say that?

A I may have.

Q Well, did you say it just about five minutes ago?

A I may have.

Q Did you or did you not say that about five minutes ago?

A I don't know, sir. Did I say that, or that he would be coming in?

Q Didn't you say about five minutes ago that in your talk with Dr. Richard, that he said, "Dr. Sam is on his way into the hospital"?

A I may have, sir, I don't know. Did I say that, or that he would be coming in --

Q I am asking you: Did you or did you not say that?

A I don't know.

Q You don't know?

A No, sir.

MR. DANACEAU:
MR. CORRIGAN:

That is all.
That is all.
(Witness excused.)

Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness JOHN CURRY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Petersilge:

Q Will you state your name?

A John Curry.

Q Your address?

A 3294 Chalfont Road, Shaker Heights, Ohio.

Q You are a practicing attorney in Cuyahoga County, are you not?

A Yes, sir.

Q And have an office in the Engineers Building?

A Yes, sir.

Q Do you hold any public office, Mr. Curry?

A Yes. I am a member of the Board of County Commissioners.

Q Now, Mr. Curry, directing your attention to a meeting of the Board of Commissioners that was held during the month of July, do you recall an occasion in which I appeared before that Board and made a request?

A Yes, I do.

Q And will you state what that request was?

A You requested the Board of County Commissioners to act

to act as arbiters in a reward offer to be made by the Sheppard family.

Q And that was in connection with what matter?

A In connection with the murder of Marilyn Sheppard. You were offering a reward.

Q Now, did the Board of County Commissioners act in that matter?

A No. They were advised by the prosecutor that they could not act as a Board.

Q Do you recall then, whether I made a request that the members of the Board act as individuals in that matter?

A Yes. You made such a request.

Q Can you tell the jury what was done on that request?

A We agreed to act as individuals, the three members of the Board of Commissioners, of County Commissioners, Mr. Gorman, Mr. Spieth and myself agreed individually to act as arbiters for that fund.

Q Now, following that, Mr. Curry, did I prepare an agreement between you and the members of the Sheppard family in reference to that reward money?

A Yes, you did.

Q And was that agreement signed?

A Yes.

Q Do you have an executed copy of that with you?

A Yes, I do.

Q Well, will you take a look at it and state who the signators of that agreement are?

A The signers were: Dr. Samuel H. Sheppard; Dr. R. A. Sheppard; Dr. Richard N. Sheppard; Dr. Stephen A. Sheppard; John F. Curry; Joseph F. Gorman and Henry W. Speeth.

Q And without going into the details, will you state whether that agreement sets forth the terms on which the reward money is to be held and distributed?

A Yes, sir.

Q Now, can you just summarize what those provisions are?

MR. PARRINO: May we have the date of it, please?

MR. PETERSILGE: Yes.

Q Can you give us the date of the agreement?

A Yes. It was signed on the 13th day of July, 1954.

Q All right. Will you go ahead?

A Yes. The agreement provided in substance that we were to

be the arbiters of a reward offered by the Sheppard family in the sum of \$10,000 for the arrest and final conviction of the murderer or murderers of Marilyn Sheppard, and the agreement was to be for a period of five years, I think terminating in July of 1959.

Q And was there any provision for possible extension of that time?

A Yes. It provided further that if at that time, at the end of five years, there was no arrest and there had not been a final disposition of the case, we were to continue to hold that reward money until there was a final disposition of that particular case arising after a five-year period.

Q Now, under the terms of that agreement, Mr. Curry, whose decision is final with respect to disposition of that money?

A The arbiters, two out of three may decide the matter.

Q Can you tell the jury whether pursuant to that agreement any money was put up to support the reward?

A Yes. The Sheppard family deposited \$10,000 in the Cleveland Trust Company.

Q And do you have in your possession the bank book which evidences that deposit?

A I do.

Q Will you take it out and refer to it?

A I will.

Q And give us the number of that account.

A The depositor is the Cleveland Trust Company at Euclid and East 9th Street. The number of the account is identified as number 371646, and appears in the names of John F. Curry, Joseph F. Gorman and Henry W. Speeth.

Q And how much is the amount shown there as deposited?

A And the amount shown in this bank book is the sum of \$10,000.

Q Now, will you refer to the page on which it states the terms on which withdrawal can be made and read that to the jury?

A "Any two may draw. Balance at death" --

Q Just a moment, Mr. Curry. Where is this found?

A It is found beneath the three signatures.

Q And those are whom?

A Those are the three signatures that I just have mentioned, John F. Curry, Joseph F. Gorman, Henry W. Speeth, and alongside those three signatures appears the word "special," and this is the language appearing below those signatures:

"Any two may draw. Balance at death of any one payable to the survivors, and upon the death of any two, payable to the survivor."

MR. PETERSILGE:

You may examine.

- - -

CROSS-EXAMINATION OF JOHN F. CURRY

By Mr. Danaceau:

Q Mr. Curry, you ordinarily see me down at the Board of County Commissioners, don't you?

A Yes, sir.

Q And was I present at the time that Mr. Petersilge came down to make the request of the Board?

A Yes, you were, Mr. Danaceau.

Q And was I the one you presented the problem to as to whether the Board could act in that capacity?

A You were the one.

Q And is it not a fact that I told you that the Board as a Board could not, but that you individually had a perfect right to do so?

A Yes, sir.

Q And you followed that advice?

A Yes, sir.

Q Now, this agreement, which is dated the 13th, was not the date that this conversation took place, was it?

A I don't remember that, Mr. Danaceau. I don't think so, because it was a later date when we signed the agreement and the money was deposited.

Q As a matter of fact, the first meeting with the Board of County Commissioners took place almost a week before

that, and there was telephone calls and visits back and forth, and finally a provision was inserted extending the time before you agreed to sign it, isn't that correct?

A I think that's correct. I am just relying on my memory. I think that's right.

Q So that the first request that was made -- and I am referring to the request that was made for the Board to act -- took place during sometime in the previous week? I think the 13th was on a Tuesday or Wednesday, if I am not mistaken.

A I think you are right about that, about a week prior.

Q The 13th is on a Tuesday, according to this calendar. The Board generally meets on Mondays and Thursdays, isn't that correct?

A Yes, you are right.

Q So that the previous meeting at which the request was made would be either the Monday or Thursday of the week prior to that, isn't that correct?

A Yes, you are correct.

Q And this calendar shows that the previous Monday would be on the 5th, and that's very unlikely, so it must have been on the 8th, that would be July 8th, Thursday, July 8th?

A Well, I presume that's correct. I'm not positive.

Q Well, I am showing you the calendar.

A As to the particular Thursday, I don't know.

Q Well, the Thursday previous to the 13th is the 8th of July.

A On a Thursday?

Q Yes.

A Yes.

Q Then that would be the day?

A That would be the day.

MR. DANACEAU: Thank you. That's all.

MR. PETERSILGE: Thank you, sir.

MR. DANACEAU: Oh, one other question, John, before you leave.

THE WITNESS: All right, Saul.

MR. DANACEAU: There had been considerable newspaper stories about this offer of a reward before it was presented to the Board of County Commissioners, wasn't there?

THE WITNESS: I can't -- I don't remember.

MR. DANACEAU: Well, do you recall that when the offer was made to the Board of County Commissioners on July 8th, that the newspapers ran stories about a reward being offered?

THE WITNESS: As to whether or not there was an offer of reward in print prior

to our being asked to act as arbiters, I can't tell you, I don't know.

MR. DANACEAU: I know, but on July 8th and immediately following, that was in public, wasn't it?

THE WITNESS: Oh, yes, at that time, yes.

MR. DANACEAU: On July 8th, that was done before newspaper men down at the --

THE WITNESS: That's right, in open hearing in our Commissioner's office.

MR. DANACEAU: And that very day all the newspapers ran stories about it?

THE WITNESS: That's right, that's right.

MR. DANACEAU: All right. That is all.

(Witness excused.)

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Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness CARL R. SCHUELE, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF CARL R. SCHUELE

By Mr. Petersilge:

Q Will you state your name and address, please?

A My name is Carl R. Schuele. I live at 28944 Lake Road.

Q And that is the next house west from Dr. Samuel Sheppard's place, is it not?

A Yes, sir.

Q How long have you lived there, Mr. Schuele?

A Since 1937.

Q And who are the members of your family who live in that home?

A My wife and two children, adult, grown children.

Q Are they with you now or are they away at school?

A They are away at school.

Q What is your business, Mr. Schuele?

A I am in the retail business in Cleveland, retail department store.

Q With the Fries & Schuele Company?

A Yes, sir.

Q And do you hold an office in that company?

A Yes, sir.

Q What is that?

A Vice-president.

Q How long have you known Sam and Marilyn Sheppard?

A Since they moved next door to us.

Q Do you remember when that was?

A Four or five years, I would gather, four years probably.

Q Now, during that time, did you become acquainted with Sam and Marilyn?

A Yes, sir.

Q And with their son, Chip?

A Yes, sir.

Q Did you visit with the Sheppards?

A In a neighborly fashion.

Q And what kind of a neighbor would you say Sam was?

A The best.

Q Did you see him on occasion down at the beach?

A Yes, sir.

Q And did you ever go swimming together?

A Yes, sir.

Q Did you ever see Sam and Marilyn water skiing?

A Yes, sir.

Q Do you water ski yourself?

A Yes, sir.

Q Have you ever water skied with them?

A Yes, sir, I have.

Q How about your children?

A Yes, sir, they have.

Q They have water skied, too, with the Sheppards, is that right?

A Yes, sir.

Q Now, how frequently would you see Dr. Sam Sheppard and his wife?

A Infrequently during the winter and quite frequently during the summer.

Q And during the times that you observed them, what was Dr. Sam's attitude toward his wife?

A Good.

Q And hers toward him?

A Nothing but good.

Q Did you ever see him mistreat her in any way?

A No, sir.

Q What would you say as to his temperament as you observed it?

A Good. The best.

Q Now, Mr. Schuele, do you know what reputation Dr. Samuel Sheppard bore in the community?

MR. DANACEAU: I didn't hear
what you said.

MR. GARMONE: The reputation

he bore in the community.

A I knew nothing but good.

Q Were you and your wife at home on the night of July 3rd?

A We went to an early picture show and returned, roughly, about ten o'clock, I would say.

Q And what did you do after that?

A Listened to the ball game, part of it.

Q And how late were you up that night?

A I would judge about eleven o'clock.

Q And at that time what happened?

A I went to sleep, Mrs. Schuele and I both went to sleep, I guess. It was before the late game finished, I know that. I don't know exactly the time.

Q Did you hear any noise or any disturbance during the night?

A No, sir.

Q Did you sleep soundly throughout the night?

A Yes, sir.

Q And when were you awakened in the morning?

A Between 7:15 and 7:30.

Q And what awakened you?

A Our front door bell was rung.

Q Who was ringing you at that time in the morning?

A Chief John Eaton and Mayor Houk.

Q And was that the first information that you got about the

death of Marilyn Sheppard?

A Yes, sir.

MR. PETERSILGE: You may examine.

CROSS-EXAMINATION OF CARL R. SCHUELE

By Mr. Danaceau:

Q Are you related to Gig Schuele?

A Yes, sir.

Q What is the relationship? I went to school with him. I just wondered.

A Gig is a second cousin of mine.

Q He was on our football team out at Reserve a good many years ago.

Mr. Schuele, what was the condition of the lake on the night of July 3rd?

A It was rough.

Q How rough?

A Well, it wasn't as rough as I have seen it.

Q Well, it wasn't of hurricane dimensions?

A No, sir. It was rough.

Q Do you have a boat?

A Of a sort.

Q Is it a little outboard motor boat?

A Yes, sir.

Q You wouldn't go out on the lake that night, would you,

ordinarily?

A No. sir, no, no, sir.

Q It was too rough for that?

A Yes, sir.

Q Were the waves pounding against your wall at the beach there that night?

A Well, surely. They would pound against there with --

Q They make quite a noise, don't they?

A Yes, they do.

Q You could hear it up in your house, can't you?

A Yes, sir.

Q Did you hear it that night?

A I presume we did. I'm sure we must have.

Q Had you been down at the lake at all before you went to bed?

A No, sir, because it was too rough, we didn't go down.

Q Didn't you watch the fireworks at Edgewater Park that night?

A No, sir.

Q You didn't go down, then, to watch the fireworks that night?

A No, sir.

THE COURT:

The answer is no.

Q You were awakened early in the morning?

A Yes.

Q About 7:30. And your daughter, also, was awakened, wasn't she?

A Yes, sir.

Q About the same time?

A Yes, sir.

Q And you both went down -- where did you both go when you were awakened and got dressed?

A Well, we sat in our living room for a few minutes, I don't know how long, and that was with the Chief and the Mayor. Then we went next door to the Sheppards, to the south side of their house, the Lake Road side, and stood there for a few minutes seeing a few people.

Q And did you then go down toward the beach?

A Did I go down to the beach?

Q Yes.

A Yes. Not immediately we didn't go down to the beach.

Q About what time was it that you went down to the beach?

A That, I can't tell you, but it's a part of my statement that I made shortly thereafter to the Bay Village police. I can't --

Q Your daughter went down to the beach with you?

A She was with me, yes, sir.

Q She was barefooted, wasn't she?

A She could have been.

Q She usually does that, doesn't she?

A Well, I would say down on the beach, yes.

Q Do you know whether she left her footprints down there at the beach right in front of the stairs or near the stairs?

A That could have very possibly been.

Q How old is your daughter?

A Eighteen.

Q How long have you lived where you live now?

A Since 1937.

Q How many times have you been inside the home of Dr. Sam Sheppard?

A Six times, half a dozen times.

Q About six times. In how many years?

A Four years.

Q How many times has Dr. Sam Sheppard been in your home?

A I would say probably a dozen times.

Q And would that be about the same for Marilyn Sheppard?

A I couldn't answer, because Marilyn might have come over more frequently to have seen Mrs. Schuele.

Q Yes. When you would not be there. I understand that, surely.

Dr. Sheppard was not your family physician, was he?

A I used Dr. Sheppard. I wouldn't say that he was -- actually, we don't have a family physician.

Q I see. And your daughter now is at Northwestern?

A Northwestern, yes, sir.

Q And your son, I believe, is also at college?

A Yes, sir.

Q Is he at the same college?

A Yes, sir.

Q How old is he?

A He is 21.

Q 21. What time did they go to bed the night of July 3rd?

A That, again, is a matter of record. I think it was around -- is the record available here? It's there in the record.

Q Of course -- perhaps it's not fair for me to ask you the question if you don't know, sir.

A No, sir, I don't know.

MR. DANACEAU: All right, that
will be all, then.

REDIRECT EXAMINATION OF CARL R. SCHUELE

By Mr. Petersilge:

Q Mr. Schuele, at the foot of your beach there are some rock jetties going out, are there not?

A Yes, sir.

Q And you also have some large blocks of stone or concrete in between the jetties along the face of the beach?

A No, sir.

Q Isn't there a concrete, oh, sort of shed down there in

which Dr. Sheppard and Mayor Houk kept their boats?

A That is not on our property.

Q On whose property is that?

A Bruscinio's.

Q I see. And those blocks that I referred to along the beach, is that on Mr. Bruscinio's property?

A Yes, sir.

Q With those jetties sticking out and the blocks of stone that are down there, if there is any motion in the water, the waves break against those rocks, do they not?

A Yes, sir.

Q And even with a comparatively slight motion of the water, you get quite a bit of noise?

A Yes, sir, you do.

MR. PETERSILGE: That is all.

Thank you.

MR. PARRINO: That is all,

Mr. Schuele.

THE COURT: Thank you, sir.

(Witness excused.)

THE COURT: Ladies and gentlemen of the jury, we will have a few minutes' recess at this point. Please do not discuss this case.

(Recess taken at 2:50 o'clock, p.m.)

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(After recess, 3:05 o'clock p.m.)

Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness DR. WILLIAM BLAKE SELNICK, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you state your name, please?

A Dr. William Blake Selnick.

Q Where do you live, Mr. Selnick?

A 1292 Cove Avenue, in Lakewood.

Q How long have you lived in this community?

A About three years.

Q And where did you come from?

A Philadelphia.

Q And are you a graduate of medical school in Philadelphia?

A That's correct.

Q Are you admitted to the practice of medicine and surgery in the State of Ohio?

A That is correct.

Q After you came here to Cleveland, did you have any connection with Bay View Hospital?

A Yes, I did. I came here and interned, and I have been associated with the hospital ever since.

Q When did you finish your internship at that hospital?

A July, 1953, I guess it was -- or '52 --

Q This is 1954.

A Yes. '53. I have been in surgical training a year and a half. '53.

MR. PARRINO: Just a little louder.

THE WITNESS: Do you want me to repeat what I said?

MR. PARRINO: No. Just a little louder.

Q And during the time that you were at Bay View Hospital, and since that time, have you been associated with Dr. Sam Sheppard?

A Yes. I worked with him in surgery.

Q Did you visit with him socially?

A Yes, we did. My wife and I both have been at his house, and he and his family have been at ours.

Q Is your wife a Cleveland girl?

A Yes, she is.

Q Born and raised here?

A No. She wasn't born here, but she was raised here. She was born in Cincinnati.

Q Now, how frequently would you see Dr. Sheppard?

- A Every day.
- Q And how frequently did he come to your house?
- A I think he has been at our house only once.
- Q Was he accompanied at that time by his wife, Marilyn?
- A Yes, he was. He was accompanied by his wife Marilyn, and Chip.
- Q And do you recall what time, when it was that that visit was made to your house?
- A I would say probably sometime around May or June of this year. I'm not sure exactly.
- Q Well, is there anything that fixes the occasion?
- A I know we had company. We had invited a former school teacher of Sam's, I believe, and also my wife's, and she was at our apartment, and we invited Sam and Marilyn and Chip to come over in more or less a get-together. Our folks were there.
- Q You visited -- they visited with his former school teacher?
- A Visited with us and her. I wouldn't say they just came to see her. I mean they came to see us, too.
- Q But the former school teacher of Sam and your wife was there on that occasion?
- A That's correct.
- Q Now, do you recall during the month of June going to Dr. Sheppard's house?
- A Yes, I do. We had a meeting of the -- I think it was --

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some of the leaders of the Surgeons' group in Ohio were meeting at Dr. Sam's house, and we were invited. I am not an official, or anything like that, in the surgeons' group, but we were invited, and that was in June, the first Sunday, I think, in June.

Q Well, were there other occasions when you went to Sam's house and participated in his hospitality?

A Yes, there were.

Q And did you water ski down there or swim, or anything like that?

A Yes, that's correct.

Q And what kind of hosts were Sam and Marilyn?

A They were always very good, I mean very nice hosts. We always enjoyed going out there.

Q Was there anything unpleasant that you noticed about their family life?

A Nothing that I ever noticed, no.

Q On the occasion in June when this meeting of doctors took place, were the wives of the doctors there, also?

A Yes, they were.

Q And what went on that day?

A Those surgeons who were there who were part of the committee from the State organization had their meeting. The rest of us, who were not on the committee, and our wives and the wives of those men who were in the meeting, just all gathered

around and we were eating -- we had dinner there, and just talking and entertaining each other. I think maybe --

Q Generally a pleasant time?

A That's right, yes. We cooked out on the fireplace out in back there, and we had a steak out there, cooked it out there.

Q Do you recall having a conversation with Sam on that particular day about his situation in regard to his home, and so forth?

A Well, Sam and I more or less built this fire that was out in the fireplace, and we were cooking this steak, and we were chatting back and forth. I know he said to me then, he said, gee, everything he would want he had. I mean, he had a nice home there, which I think most people recognize, and he had a nice family. He was in a good profession. He was well set up.

We were just talking about that in general.

Q He what?

A We were just talking about it in general, and how lucky he was to have everything he wanted.

Q Now, then, up to the time he was arrested, you say you were in contact with him frequently. Did you form an opinion about him?

A Well, I thought he was a very fine surgeon. I thought he was a real nice guy personally, and professionally, both. I

had a high regard for him.

Q Well, in addition to your high regard for him as a surgeon, did you form any impression of him as to what kind of a person he was?

A Well, he was kind of an easy-going fellow. A lot of surgeons, when you are in training, sometimes get irritated when you perhaps don't pass things fast enough. I know in my training and medical school, and other institutions, I found men that way, but Dr. Sam was never that way that I ever saw.

Q How was he?

A He was just very easy-going. No matter what seemed to have occurred, he just always took things in his stride and --

Q Even-tempered?

A I would say very even-tempered, yes.

Q And a pleasant man to work with?

A Very much so.

Q Were you in the vicinity of his home on the day that his wife was murdered?

A Yes, we were.

Q By the way, did you know the fact that there had been planned a party at that home on the 4th of July?

A Yes. I know Dr. Sam had mentioned it to me, and then Marilyn had called my wife and we had been invited to come. All the interns had been invited, and then several of the

staff men had been invited as well.

Q And you had planned to go there?

A Yes. We had planned to be there. In fact, we had invited them over to our place. We were having our annual reunion of the group that I had interned with, that day. We were going to try and coordinate the two.

Q And did you go to the vicinity of his home on that day?

A Yes, I did.

Q What time?

A We drove by about ten minutes to 9 in the morning. I was going to the hospital, and was then going to make rounds, and then we were going to go sailing, and we didn't stop. We noticed that police cars were there, and we saw Mayor Houk, and could see some of the people standing around the house, and I didn't know what was up. We went over to the hospital, and I found out what had happened.

We went down and checked around the hospital, and then we drove back, and we just stopped out there on the lawn, and I think I talked to one or two of the men standing around, and then we went back, and then later that morning we stopped back again on the way to the hospital, but just on the lawn there.

Q But you didn't go in the house?

A No, I didn't. We weren't allowed to.

Q Did you see Sam that day?

A Yes, I did. I saw him -- I'm not sure whether it was late morning or early afternoon. I know we had moved him from one room to another. The facilities were --

Q Did you notice his condition?

A He was just very quiet, and as I recall, I don't think he said anything to me. I was there with one of the interns, I think, and we helped move him into his bed.

Q That is all you had to do with him was help move him from one bed to another?

A That's right. I said, "Take it easy," and he sort of held his neck there and didn't say a word.

MR. CORRIGAN: Cross examine.

MR. PARRINO: No questions.

(Witness excused.)

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness MILES DAVID DAVIS, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Garmone:

Q Will you state your name to the Court and jury, please?

A Miles David Davis.

Q Where do you live?

A 375 Kenilworth Road, Bay Village, Ohio.

Q Who do you live there with?

A My parents.

Q How old are you?

A 18.

Q Did you attend school?

A Yes.

Q Where at?

A Bay Village High in Bay Village. Weona Academy in Beaverville Dam, Wisconsin, and Griswold Institute in Cleveland.

Q Now, sometime during the summer of 1954 did you have an unusual encounter with a person?

A Yes, sir.

Q And when was that, Mr. Davis?

A The evening of September 13th.

Q Where did that take place?

A In our home.

Q What room in your home?

A Our front bedroom.

Q And who occupies the front bedroom of your home?

A Mother and father.

Q Now, will you describe to the jury in your own words what transpired and at what time of the day or night it was?

MR. MAHON: Objection.

THE COURT: Objection?

MR. MAHON: Yes.

THE COURT: Objection will be
sustained.

Q This person that you encountered in your home, was he a --

MR. MAHON: I want to object.

MR. GARMONE: This is a new question.

Will you permit me to complete it?

THE COURT: I know, but we are
not going into any persons in his home on that
date, on September 13, 1954.

MR. GARMONE: Well, this boy testified
at the bail hearing, and your Honor --

MR. MAHON: I don't care whether
he did or not.

MR. GARMONE: May I complete my question, Judge, please, and I will abide by your ruling on the question?

THE COURT: All right.

MR. PARRINO: Providing it is not a leading question.

MR. GARMONE: It will not be a leading question. I make an effort not to ask leading questions, and I think you are aware of that.

Q The person that you encountered --

MR. MAHON: Wait a minute, now. There is nothing in here about encountering anyone up to this point.

Q Now, if that is not leading, what is it?
Q Did you encounter anybody in your home on that night?

MR. MAHON: I am objecting to the leading of that question. "Did you?"

Q What is the fact as to whether or not you encountered anyone in your home on that night?

MR. MAHON: Objection.

THE COURT: Objection sustained.

MR. CORRIGAN: Did anything happen in your home?

Q How many people constitute your home, Mr. Davis?

A Three.

Q That is your mother, dad and yourself?

A Yes, sir.

Q On the evening that you speak of who was at home, aside from yourself and your mother?

A Just myself.

Q Was your mother at home?

A No, sir.

Q You were home alone?

A Yes, sir.

Q Now, what happened in your home that evening?

MR. MAHON: Objection.

THE COURT: Objection sustained.

Q Did you see someone in your home on that night?

MR. MAHON: Object, your Honor.

THE COURT: Objection sustained.

Q Was the person that you saw in your home on that evening either your mother or your father?

A No, sir.

MR. MAHON: Now, if your Honor please, -- wait a minute, please -- I want to object, and I think Mr. Garmone should be cautioned about this line of questioning.

THE COURT: Objection will be

sustained.

Mr. Garmone, let's discontinue this inquiry because --

MR. GARMONE: May I ask just one --

THE COURT: The Court will rule generally that is not admissible at all.

MR. GARMONE: May I ask one more --

THE COURT: You may put anything you care to in the record about it.

MR. GARMONE: May I ask one more question, and if you sustain the objection, I will release the witness.

THE COURT: I know, but let's not suggest what you are trying to get in here. It is not correct. You mustn't follow it.

Q Can you give a description of the person?

A What --

MR. MAHON: Object, if the Court please.

THE COURT: Ogjection will be sustained.

MR. GARMONE: Come over here, Mr. Davis.

(Thereupon the following proceedings were had outside of the hearing of the jury):

Q. Did you encounter a person in your home that night?

A. Yes, sir.

Q. Was it either your mother or your dad?

A. No.

Q. Was it a strange person?

A. Yes.

Q. Are you able to give a description of that man?

A. A slight description.

Q. Give the stenographer the description.

A. Approximately six foot tall, I'd say approximately 180 pounds.

Q. Did you rattle with that person?

A. Yes, sir.

Q. And what, if anything did you take away from him during the rattling period?

A. At that time I didn't know what type of instrument it was, but it turned out to be a monkey-wrench.

Q. Did you turn that instrument over to any members of any police department?

A. Yes, Bay Village police.

Q. Have you seen the instrument since?

A. No, sir.

Q. Have you been contacted with regard to that instrument or that person since you have turned the information over to the Bay Village Police Department?

A. No.

MR. GARMONE: If he would have been permitted to answer the questions, those would have been the questions and the answers.

(Thereupon proceedings were resumed within the hearing of the jury, as follows):

MR. GARMONE: That is all.
Of course, we note our exceptions to the Court's ruling.

THE COURT: Yes. You have no questions?

MR. MAHON: No questions.

(Witness excused.)

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Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness THOMAS E. UHLE, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF THOMAS E. UHLE

By Mr. Petersilge:

Q Will you state your name and address, please?

A Thomas E. Uhle, 2432 Edgehill Road, Cleveland Heights.

Q What business are you in, Mr. Uhle?

A I'm an insurance agent.

Q Can you speak a little louder?

THE COURT: Kindly spell the
last name, please?

THE WITNESS: U-h-l-e.

Q You said you were in the insurance business, Mr. Uhle?

A That's correct.

Q What company do you represent?

A I now represent the Dominion Life Insurance Company.

Q And what company did you represent before that?

A Berkshire Life.

Q How long have you known the defendant, Sam Sheppard?

A Approximately 20 years, I'd say.

Q Were you also acquainted with his wife, Marilyn?

A Yes.

Q Did you go to school at the same school that he attended?

A I did. I was ahead of Sam in school.

Q Now, Mr. Uhle, do you recall a time in 1951 when Dr. Sheppard and his wife returned from California?

A I recall a time shortly after that, yes.

Q And did you at that time discuss insurance program with Dr. Sheppard?

A I did, sir.

Q In the course of that discussion, did Dr. Sheppard state to you what provisions he wanted to make for his family?

A Yes, he did. I -- may I elaborate on that a little bit?

Q Do you have any records of yours that indicate that?

A I do, sir.

Q Will you refer to those records?

A Yes.

Q And will you state to the jury what Dr. Sheppard told you at that time he wanted to do?

A What we tried to establish with Dr. Sheppard's life insurance program was a cash fund available for final expense purposes, and these are all in the event something were to happen to Dr. Sam. The cash fund --

Q Can you speak just a little louder?

A Yes. A cash fund of \$5,000 for final expense purposes and an educational fund for --

Q By final expense purposes, you mean what?

A Burial purposes, primarily, and probate of his estate.

Q Clean up expenses of last sickness and funeral and probate expenses?

A That's right. And expense fund for the education of Chip in the amount of \$10,000, to be made available when he attained age 18. We tried to -- he set up as his objectives for income purposes for Marilyn and Chip \$400 a month to be paid for a 14-year period. Chip was at that point four years old. And a life income objective to be continued and paid to Marilyn from that point on in the amount of \$200 a month.

Q That is, that would be \$400 a month until Chip reached what age?

A 18.

Q And from that time on, \$200 a month to Marilyn for how long?

A For life.

Q In pursuance of that, did you set up an insurance program for Dr. Sam?

A I did, sir.

Q And was the program that you set up along the lines that you have just outlined?

A Yes. It accomplished those objectives.

Q And did you have a further conference with Dr. Sam on that?

A Several, as I recollect.

Q As a result of that, what is the fact as to whether or not he took out insurance policies through you to carry out that program?

A Well, the answer is definitely in the affirmative. He took out three separate policies, and I think it would waste time to discuss the types, but basically, they did this work. They were several different kind of policies which accomplished these objectives.

Q But in the aggregate, the policies accomplished the program that he had set forth as his objective, is that correct?

A That is correct.

Q Do you know, Mr. Uhle, whether -- withdraw that question.

At what time were those policies taken out?

A They were effective September 1, 1951. ✓

Q And do you know, of your own knowledge, or do your records in your office show whether the beneficiary provisions of those policies have been changed between that date and the present date?

A They have not been changed.

Q Now, during the time that you were acquainted with Sam and with Marilyn, did you know him socially at all?

A Not very much, no.

Q Did you handle any insurance for him besides his life insurance?

A To the best of my knowledge, I handled all of Sam's insurance, and do so today.

Q That included the insurance on his home, did it?

A That's correct.

Q And do you recall the fire that they had a year or so ago?

A Very well.

Q Were the adjustments in connection with that handled through you?

A Yes, sir, they were.

Q And did you have occasion at that time to go out to their home and examine the damage, and so forth?

A Quite a number of occasions, yes.

Q What could you tell the jury about Dr. Sheppard's disposition and temperament as you have observed it over the time that you knew him?

A Well, I know of no occasions when Dr. Sam was anything but a normal person, a good husband, I'd describe him. And please understand, so that I don't overstate the case, I know most of my opportunities to observe Sam and Marilyn were in a business way. There were a few social occasions. He was a normal husband in every way, as far as I knew.

Q Mr. Uhle, do your records show the amount of the premiums on those policies you sold Dr. Sheppard in September, 1951?

A Yes, they do. These are unusual policies in that the premiums go up for a period of six years, and then they attain a level basis.

Q It is a graduated increasing scale, is it?

A That is correct.

Q Until it reaches a certain point?

A At the time they were taken out, in 1951, the first years premium at that point was \$802. The current premium just paid in September or thereabouts is \$1,163. The ultimate premium which will be reached is \$1,404.

Q That's per year?

A That is correct.

Q And those premiums have been paid regularly since the policies were taken out?

A They have, sir.

Q And were the policies in force at the time of Marilyn Sheppard's death on July 4, 1954?

A They were.

Q Do you know who the contingent beneficiary is under both policies?

A Chip.

Q That's Dr. Sheppard's son?

A That's correct.

MR. PETERSILGE: You can examine.

MR. MAHON: No questions.

MR. PETERSILGE: That is all.
Thank you.

(Witness excused.)

MR. CORRIGAN: Is Chief Eaton
here? I subpoenaed him.

THE COURT: Chief Eaton?

MR. CORRIGAN: Chief Eaton.

THE BAILIFF: Chief Eaton
doesn't seem to be here.

MR. CORRIGAN: William will
you check on Chief Eaton and see if he was
served and get him here tomorrow?

WILLIAM H. CORRIGAN: All right.

THE COURT: Have you someone
else you could use now?

MR. CORRIGAN: What? What did
you say, your Honor?

THE COURT: Have you anyone
else that you could use now?

MR. CORRIGAN: Yes.

THE COURT: All right.

MR. CORRIGAN: Miss Johnston.

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Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness ELMIRA JOHNSTON, who, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION OF ELMIRA JOHNSTON

By Mr. Petersilge:

Q Will you state your name, please?

A Elmira Johnston, Mrs.

Q Where are you employed, Mrs. Johnston?

A Bay View Hospital.

Q And how long have you been employed there?

A A year and four months.

Q In what capacity are you employed?

A Switchboard operator.

Q And during what hours are you on duty at the switchboard?

A From 7:00 until 3:00.

Q That is, 7:00 in the morning until 3:00 in the afternoon?

A That's right.

Q Now, will you state your address, please?

A 24214 Bruce Road.

Q Is that in Bay Village?

A Yes, it is.

Q That is a street off Lake Road just a short distance from the hospital, is it not?

A That's right, a half mile.

Q You are acquainted with the defendant, Sam Sheppard, are you now?

A Yes, I am.

Q And did you know his wife, Marilyn?

A Yes, I did.

Q Do you recall early in 1954 that Dr. Samuel Sheppard and his wife took a trip to California?

A Yes.

Q Do you recall any occasion subsequent to that on which you had any occasion to see Mrs. Marilyn Sheppard at the hospital?

A Yes, I did. At two different times when Dr. Sam left his paycheck with me for her to pick up.

Q Now, can you tell us when those occasions were?

A Well, the first one was in April and the second one was in May.

Q Now, what happened on those two occasions? Will you just tell the jury?

A Well, the first time Dr. Sam was in surgery and he came out with this envelope. He said, "I have my paycheck in here and my wife will pick it up."

She picked it up later that day.

Q And the second occasion?

A The second time he came out with the check, it was not in

an envelope, and he said, "I haven't endorsed my paycheck," and he had to go to the Caffera Hospital in Youngstown, and he said that she would be in to pick it up later.

Q And you say it was not in an envelope on that occasion?

A It was not.

Q Do you know from whom that check came?

A It came from the Fairview Clinic.

Q And do you know the amount of that check?

A \$1,000. Naturally, I looked at it, it wasn't in an envelope.

Q Did Marilyn Sheppard come in later that day and pick up the check?

A Yes, she did.

Q And did she say anything on that occasion?

A Why, she asked me if she could use my pen to endorse it. After she endorsed it, she asked me what time it was. I told her it was ten minutes of two, and she said, "Oh, I must hurry to get to the bank before it closes."

MR. PETERSILGE: That is all.

MR. PARRINO: No questions.

MR. MAHON: No questions.

That's all.

MR. PETERSILGE: Thank you, Mrs.

Johnston.

MR. DANACEAU: Just a minute.

CROSS-EXAMINATION OF ELMIRA JOHNSTON

By Mr. Danaceau:

Q Were you at the switchboard the early morning of July 4th
when a telephone call came in?

A No, I wasn't. I was in the State of Washington. I was
on my vacation.

Q There was somebody else there then?

A That's right.

MR. DANACEAU: That is all.

Thank you very much.

(Witness excused.)

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Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness ELMO W. HOWELL, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF ELMO W. HOWELL

By Mr. Petersilge:

Q Will you state your name, please?

A Elmo W. Howell.

Q And whereabouts do you live, Mr. Howell?

A At 23728 Bruce Road.

Q And Bruce Road is where?

A In Bay Village.

Q And how long have you lived there?

A About three years.

Q About two years?

A Three.

Q What business are you in?

A I have a machine shop that I operate, own?

Q Where is that located?

A It's on 12900 Berea Road.

Q Are you acquainted with the defendant, Dr. Samuel H. Sheppard?

A Yes, sir.

Q How long have you known him?

A About two years.

Q Did you know him professionally?

A Well, I have consulted him.

Q Or socially or in some other way?

A All three ways, I guess.

Q All right. Will you tell us how that was?

A I met him through the Cleveland Sports Car Club that we belong to, and I knew him socially, he visited our house, and I consulted him professionally.

Q How frequently did you see him at the Sports Car Club?

A Oh, infrequently, a couple months, I imagine.

Q You are interested in sports cars, I take it?

A Yes, sir.

Q Do you own any sports cars yourself?

A Yes, sir, I do.

Q What do you own?

A Well, we have two of them at the moment. We have a Jaguar coupe and a Triumph TR-2 roadster.

Q And in addition, do you have any special racing car or cars that you own or are interested in?

A Not at the moment, no, I don't. I used to have.

Q Now, have you on any occasion attended these sports car races with Dr. Sheppard?

A Yes, sir, we did -- I did.

Q And can you tell us approximately when that was?

A About the middle of June at Put-in-Bay Island.

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Q Was that last June, that is, of this year?

A Yes, of 1954.

Q And what was the occasion that you attended there?

A Well, I was entered in the race, and I offered to let Sam drive a car that I owned. It was the first time that he had ever raced, so the car that I had, I offered it to him, was suitable for a first time driver, and he took me up --

Q Was he what you would call a beginner or novice, or something like that?

A Yes, I would say.

Q What car was it?

A It was an MG, a stock MG.

Q And did Dr. Sheppard drive the car in that race?

A Yes, sir, he did.

Q How did he come out?

A Well, he was doing pretty good until he missed a shift in one of the laps, and I don't know -- I guess the motor stalled, or something like that, and he dropped out.

Q When you were at Put-in-Bay, how long were you there?

A I was there from Thursday afternoon until Sunday afternoon.

Q Was Dr. Sheppard alone on that occasion, or was he accompanied by his wife or family?

A Mrs. Sheppard was with him. Marilyn was with him.

Q And do you know how long they were there?

A They got there Friday afternoon, I believe, and he left

on late Saturday afternoon.

Q Do you know where he stayed on that occasion?

A Yes. We had a cottage together.

Q And do you know the reason that he went back on Saturday?

A There was an emergency operation, I believe, and he was called in to the hospital.

Q Did his wife go back with him, or did she follow later?

A No, she didn't. She came back Sunday with some other friends.

Q Now, you say that he has also visited at your home?

A Yes, sir.

Q And you consulted him professionally?

A Yes, sir.

Q As a result of those contacts, Mr. Howell, have you formed any opinion about the temperament of Dr. Sheppard?

A Well, I always felt him to be very even-tempered and extremely interested in the things that -- or, not interested -- but I mean excited about the things that he was deeply interested in, and very even-tempered about most all social affairs, and so forth.

Q And on the occasions when you saw him and his wife together, how did they act toward each other?

A I would say very much normal.

Q Do you recall the last time that you saw Dr. Sheppard before the death of Marilyn?

A I believe it was a Thursday evening, the first part of July,

just around 10 o'clock, at our house.

Q And what was the occasion there on which you saw him?

A Well, he and a friend of his dropped in just to talk over sports cars for a few minutes, and have a bottle of coke and go home.

Q And how did he appear on that occasion?

A Very normal.

Q Are you acquainted with the general character and reputation of Dr. Sheppard in the community in which you live as being a law-abiding citizen?

A Well, I personally haven't made any study of it. From what I have known of him, I would say he is a very law-abiding citizen.

Q And what would you say as to whether his reputation is good or bad?

A His reputation is good.

MR. PETERSILGE: You may cross examine.

MR. MAHON: No questions.

(Witness excused.)

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness MRS. E. W. HOWELL, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Petersilge:

Q Will you state your name, please?

A Mrs. E. W. Howell.

Q And that was your husband who just preceded you on the stand, was it not, Mrs. Howell?

A Yes, sir.

Q What was your maiden name before you were married?

A Kane.

Q And was it your father who was formerly editor of one of the newspapers here?

A Yes, sir.

Q What newspaper was that?

A The Cleveland News.

Q Are you acquainted with the defendant, Dr. Samuel H. Sheppard?

A Yes, sir.

Q How long have you known him?

A Two and a half, three years.

Q During that time did you have occasion to consult him

professionally?

A Yes, sir.

Q Did you also have any social contacts with him or with his wife or with both of them?

A Yes.

Q And did you know his wife, Marilyn Sheppard, for about the same length of time that you have known Dr. Sam?

A Yes.

Q Are you also a member of the Cleveland Sports Car Club?

A Secretary.

Q Do you drive a sports car?

A Yes, sir.

Q What car do you drive?

A Well, around I drive a Jaguar.

Q And have you had occasion to see Dr. Sam and Marilyn at some of the meetings of the Cleveland Sports Car Club?

A Yes, sir.

Q Have you also attended any races with them?

A Yes.

Q Now, as a result of your contacts with Dr. Sam and his wife at the Sports car events, and also on social occasions, also in consulting him professionally as a doctor, have you formed any opinion as to the kind of person that Dr. Sam is?

A Yes, sir.

Q Will you tell the jury what kind of a person he is, as you have observed him?

A Well, he is an extremely steady person and not easily excited. He drove a race at Put-in-Bay with practically no variation in his laps, which is an extremely steady driver under extremely exciting conditions.

Is that what you wanted to know, Mr. Petersilge?

Q Yes. Any observations that you have made of him.

Did you ever see him lose his temper?

A No, sir.

Q And have you had occasion to observe his conduct toward his wife?

A Yes.

Q And her conduct toward him?

A Yes.

Q And how did they seem to you?

A They were very considerate of each other, and to all appearances ideally suited to each other.

Q Now, Mrs. Howell, are you acquainted with Dr. Sheppard's general character and reputation in the community as being a law-abiding citizen?

A Yes.

Q And what can you say as to that?

A Well, --

THE COURT:

Is his reputation good

or what?

THE WITNESS: Oh, excellent reputation,
well liked and admired by almost everyone.

Q Do you recall the last time that you saw Dr. Sheppard prior to his wife's death?

A Yes, sir.

Q And on what occasion was that?

A Well, on Thursday night before this happened, he came loping in about 10:30.

Q When you say loping in about 10:30 --

A Well, he was all excited because a friend of his had bought an MG. They brought it over to show us.

Q And how long did he stay on that occasion?

A Half hour, 45 minutes.

Q At that time did he seem to have anything on his mind except the friend's MG?

A Nothing.

Q Something like a kid with a new toy?

A Very much like a kid with a new toy.

MR. PETERSILGE: You may examine.

MR. MAHON: No questions.

(Witness excused.)

MR. CORRIGAN: Mrs. Vetter.

Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness LAVELLE MILLER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q What is your name?

A Lavelle Miller.

MR. CORRIGAN: I thought I called
Mrs. Vetter.

Q Where do you live, Mrs. Laverne Miller?

A 2604 Walton Avenue.

MR. CORRIGAN: Who is this?

I would like to find out who you are.

MR. PARRINO: Let's start all
over again.

THE WITNESS: I am Lavelle Miller.

Q Lavelle?

A L-a-v-e-l-l-e.

Q Where do you live, Mrs. Miller?

A 2604 Walton Avenue, Cleveland, Ohio.

Q How long have you lived in this community?

A Off and on for about 14 years.

Q And are you employed?

A Yes, I am.

Q And what is your employment?

A I am a real estate saleslady with the E. H. Miller Realty.

Q And did you know Marilyn Miller -- or Marilyn Sheppard?

A Yes, I did.

Q And when did you first become acquainted with her?

A Back in 1951.

Q And was your acquaintance a business acquaintance or social acquaintance?

A Social.

Q Did you visit her home?

A Yes, I did.

Q Did you know Dr. Sam Sheppard?

A Yes, I did.

Q How long did you know Sam?

A Since '51.

Q And did you visit both of them?

A Yes, I have.

Q What were the occasions that you would visit their homes?

A I have been out there at various times. I have stopped in on occasions. I have been there for parties.

Q Did you make observation during those periods and during the time that you knew them as to how they conducted themselves toward one another?

A They always seemed very happy to me.

Q What?

A They always seemed very happy to me.

Q Did you notice what Sam's attitude was toward Marilyn and Marilyn toward Sam?

A I would say very nice.

Q Now, when was the last time you saw Marilyn?

A About three or four days before the murder.

Q Three or four days before she was killed?

A That's right.

Q And what was the occasion?

A I was out in the neighborhood and I stopped in to see her.

Q And was it in the daytime or --

A In the afternoon.

Q She was alone?

A Well, Chip was there.

Q On that occasion did you learn from her that she was going to have a baby?

A Yes, I did.

Q What?

A She told me she was pregnant, and she was radiantly happy when she told me.

Q Radiantly happy?

A Yes, sir.

MR. CORRIGAN: I think that is
all I want to ask of you, Mrs. Miller.

Cross examine.

MR. PARRINO: No questions.

(Witness excused.)

MR. CORRIGAN: Mrs. Vetter. Is
she there?

Thank you, Mrs. Miller.

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness ELIZABETH ANN VETTER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you please state your name to the Court and jury?

A Elizabeth Ann Vetter.

Q How do you spell your last name?

A V-e-t-t-e-r.

Q And where do you live, Mrs. Vetter?

A 781 Columbia Road, Westlake.

Q And how long have you lived in this community?

A Nine years.

Q Are you occupied at any trade or profession?

A I am a registered nurse.

Q And how long have you followed that profession?

A Well, I graduated in 1926, and I got married in 1930, and I went back to work five years ago.

Q And where did you graduate from?

A Kingston General Hospital, Ontario.

Q Have you been employed at the Bay View Hospital?

A Yes, sir.

Q How long have you been employed there?

A It will be nine years in June -- or five years, excuse me, I'm sorry.

Q Do you know Dr. Sam Sheppard?

A Yes, sir.

Q Did you know his wife?

A Well, I had her as a patient.

Q Now, during the time that you worked at Bay View Hospital, and during the time that Sam Sheppard was there, did you come in contact with him frequently?

A Yes, sir.

Q As a result of those frequent contacts with him over those years that you knew him, did you form an opinion about the man?

A He had a very fine character.

Q A very fine character?

A Yes, sir.

Q Was there anything about him that evidenced any explosion of temperament or temper?

A No, sir.

Q You say he was even-tempered?

A Very.

Q Now, then, were you at work on the 4th of July?

A Yes, sir.

Q 1954. What time did you come to work?

A 3 o'clock in the afternoon.

Q And after you came to work did you have anything to do -- you knew, of course, at that time that Marilyn had been murdered?

A Yes, sir.

Q And you knew that Sam was in the hospital?

A Yes, sir.

Q After you came to work at 3 o'clock in the afternoon, did you have anything to do in regard to nursing duties?

A I brought him in his supper tray which was of liquids.

Q What?

A I brought him in his supper tray of liquids.

Q And at 3 o'clock in the afternoon -- do you remember what the first time was that you came in contact with him on the 4th of July, about what time it was?

A About quarter of five.

Q And did you go into his room on that occasion?

A What?

Q Did you go into his room on that occasion?

A Yes, sir. I brought him in his supper.

Q Did you notice what his condition was?

A Nervous.

Q What?

A Very nervous.

Q Yes. Did you notice any wounds or anything like that on him?

A He had a swollen -- the right side of his face was very

badly swollen, his upper lip, and he apparently had a stiff neck.

Q Had a what?

A Stiff neck. His neck was sore.

Q That is, did you notice what movement he could make of the upper part of his neck?

A Well, if he was on his left side, it was very difficult for him to get out.

Q Now, then, you brought in the regular designated hospital diet for him?

A Yes, sir.

Q And will you tell the jury what he did in regard to eating that?

A He didn't eat it.

Q He did not?

A No, sir.

Q Do you know when was the first time he took any solid foods?

A Oh, about 36 hours, I think.

Q What?

A About 36 hours before he ate solid food.

Q About 36 hours. And during the period that you were on there, did you see a policeman standing or sitting guard at the door?

A Yes, sir.

Q And during the period that you were on there, how long was

that policeman there?

A He was -- there was a policeman there nearly all the time.

Q All the time. Was there anybody, during the time that you had charge of that particular section of the floor, prevented from going in to see him?

A No, sir.

Q There was not?

A No, sir. Not on my time.

MR. CORRIGAN: Cross examine.

MR. PARRINO: No questions. You are excused. Thank you.

(Witness excused.)

MR. CORRIGAN: Mrs. Mildred Harridge.

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness MRS. MILDRED HARRIDGE, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you state your name to the Court and jury?

A Mrs. Mildred Harridge.

Q Where do you live?

A I live in Bay Village.

Q And what street address?

A 546 Huntmere Drive.

Q How long have you lived in Bay Village?

A Since February, 1954.

Q How long have you lived in this community?

A For about three years.

Q Twenty years?

A Three years.

Q Where did you live before that?

A I lived in Pennsylvania.

Q In where?

A Pennsylvania. Pittsburgh, Pennsylvania.

Q And are you employed?

A I am employed. I am a registered nurse.

Q And what school are you a graduate of?

A University of Pittsburgh School of Nursing.

Q And what year did you graduate from the University of Pittsburgh?

A 1946.

Q And have you worked continuously at your profession since that time?

A Most of the time I have, yes.

Q Where are you employed at the present time?

A At Bay View Hospital in Bay Village.

Q And when did you start employment there?

A In March, 1954.

Q And have you been continuously there since March, 1954?

A Yes, I have.

Q You, of course, know Dr. Sam Sheppard?

A Yes, I do.

Q And during the time that you have been working in that hospital, March, 1954, did you see him during the months of April, May and June?

A Yes, I did.

Q And you have worked in other hospitals, haven't you?

A Oh, yes.

Q With a great many doctors?

A Yes.

Q Did you contact him during that period of time frequently or infrequently?

A I would say infrequently.

Q From the contact you made with him, did you form an opinion about him as to what kind of a person he was?

A Yes, I did. I felt that he was always courteous, and he was always very friendly and very easy to work with.

Q Now, did you come in contact with him after he was brought into the hospital on the 4th of July?

A Yes, I did. On July the 7th.

Q On July the 7th?

A That's right.

Q That would be Wednesday?

A That's right.

Q And how did you come -- you hadn't been attending to him before that?

A No.

Q How did you come in contact with him on Wednesday, July the 7th?

A Well, I was in charge of the floor from 7 to 11:30, where Dr. Sam was a patient, and I went in about 9:30 to prepare him for the night.

Q Now, on that particular night can you state to the jury whether he saw you as you came in?

A No, he didn't. The door was partially open and his vision

was blocked because of the door. He couldn't see me coming in.

Q And you could see him, but he could not see you, is that the fact?

A That's right, Mr. Corrigan.

Q Now, will you describe what you noticed when you saw him and he did not see you?

A He was getting out of bed, and he was getting out very slowly and very painfully as if it bothered him to move.

MR. CORRIGAN: Cross-examine.

MR. MAHON: No questions.

(Witness excused.)

MR. CORRIGAN: Well, that, your Honor, completes --

MR. GARMONE: I told him.

THE COURT: All right. Mr. Garmone has mentioned it.

Ladies and gentlemen of the jury, we will now be adjourned until 9:15 tomorrow morning, and will you be kind enough to be very careful not to discuss this case with anyone or permit anyone to discuss it with you?

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(Thereupon at 4:15 o'clock p.m. an adjournment was taken to 9:15 o'clock p.m., Thursday, December 9, 1954, at which time the following proceedings were had):